

Quality Housing: Regulatory and Administrative Framework in Malaysia*

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ABSTRACT

The housing industry in Malaysia is regarded as one of the major industries contributing to the economic and social development of the country. The industry is regulated by several sets of rules and the imposition of regulations, guidelines and standards is to ensure that all categories of houses, inclusive of houses for the lower income group will be constructed according to the acceptable standard. Despite the existence of these regulatory measures, yet there are many problems faced by house-buyers in Malaysia. This has to be affiliated with the level of commitment of housing developers as well as the enforcement of the above rules and regulations by the respective authorities. One of the most common problems encountered by the Malaysian house buyers is the sub-standard construction of houses. There is a standard form of sale and purchase agreement (SPA) stipulated under the Housing Development (Control and Licensing) Regulations 1989 (HD Regulations 1989) but as far as the problem of sub-standard construction of houses is concerned, Malaysian house-buyers are not well protected. In general there is no benchmark in Malaysia to measure the standard of quality of houses constructed by developers. It is the aim of this article to look into some recent amendments to the legal provisions (and its loopholes) concerning the statutory duties imposed on the three

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most important institutions related to the building of quality houses, namely the local authorities, the Ministry of Housing and Local Government (MHLG) and the Construction Industry Development Board (CIDB), in ensuring that houses constructed by developers will meet the quality that house-buyers expect. It is hoped that all quarters involved in the Malaysian construction industry be they professionals or semi professionals as well as policy makers will take into account the enforcement of the laws and practices in other jurisdictions as reference for the construction of quality houses.

Keywords: Building laws, House-buyers, Local authority, Housing and Construction.

INTRODUCTION

Malaysia is known as a country having a very wide set of rules and procedures relating to housing development. In spite of this legal environment and controls, the housing industry is facing with consumers or purchasers demand for quality housing from their developers. In this article the meaning of “quality housing” is referred to as housing that free from defects i.e. houses with good quality of workmanship and materials. Literally the term “defective” may not accurately be used in the context of a building, but it is common in the construction industry that the term “defective” be used interchangeably with the term “sub-standard”. In order to examine the existing measures of legal and administrative control over the quality of houses in Malaysia, this article will highlight the standard guidelines for the construction of low cost houses i.e. the Construction Industry Standard 1 (CIS 1) and the Construction Industry Standard 2 (CIS 2) as well as the duties and responsibilities of the three main authorities, i.e. the local authorities, the Ministry of Housing and Local Government (MHLG) and the Construction Industry Development Board (CIDB).

THE PROBLEM OF SUB-STANDARD CONSTRUCTION OF HOUSES IN MALAYSIA

There are three categories of developers involved in housing development in Malaysia; private developers, statutory bodies and co-operative societies. All these developers are governed by the Housing Development (Control and Licensing) Act 1966 (HDA) when they undertake housing development involving the construction of more than four units of housing accommodation. In Malaysia the practice is “sell then build” i.e. houses are offered for sale prior to its construction or completion or even prior to the clearing of land. The payment of the purchase

price of houses is made progressively according to the stages of completion of construction as regulated by the Housing Development (Control and Licensing) Regulations 1989 (HD Regulations 1989). The system does not allow house-buyers to view the houses they purchased while having to accept the delivery of houses irrespective of their quality. Despite the common practice of “sell then build”, the Malaysian government is actually encouraging developers who are willing to implement the “build then sell” in their housing development. Consequently effective from 1st December 2007 the HD Regulations 1989 has been amended in which the new Schedules of I and J have been inserted in order to accommodate such practice. However it is still debatable whether the practice of “build then sell” will solve the problem of quality of building. The only clear advantage as regard to quality of building is that to give opportunity to interested purchasers to view the house and detect any defects which are visible at the time of viewing the house. Thus how about the latent defects?

The right of purchasers for quality houses in terms of good workmanship and quality materials is derived from the standard Sale and Purchase Agreement (SPA) (Schedule G and H of the HD Regulations 1989). Clause 14 uses the phrase “*the building shall be constructed in a good and workmanlike manner.*” This clause requires a developer to construct houses in a good and workmanlike manner where the workmanship and materials used must conform to description. In other words there are two express terms in this clause; materials and workmanship must conform to description; and construction must be done in a good and workmanlike manner. Based on this clause any purchaser having a problem of sub-standard construction of house may claim remedies against the respective developers.

Generally there are two kinds of remedies; first, remedies under the law of contract and second, the statutory remedies available during the statutory warranty period. The statutory remedies are derived from the standard SPA under the HD Regulations, 1989. Under the recent amendment of the HD Regulations (which came into force on the 1st December 2007), the defect liability period is valid for twenty four months from the date of handing over vacant possession of the completed unit. Since the defect liability period is quite long, this may give quite comfortable protection to purchasers. However there would be a problem of latent defect which may occur only after two years. The problem relating to land settlement for instance may occur only after some time and may not show any sign during this liability period. Hence the affected purchaser still will have to take the hassle of remedying the defect at their own expenses.

Basically the Homebuyers Tribunal is the best avenue for purchasers to solve their problems and claims against developers. Nevertheless as far as the issue of sub-standard construction of houses is concerned, there are few drawbacks of the Tribunal which limits the right of house-buyers. First, the Tribunal’s jurisdiction is limited to claims not exceeding RM50,000. Thus if the problem involves a bigger amount exceeding RM50,000, buyers have to bring their claims before the ordinary

courts. Secondly, the time for filing the claim before the Tribunal is quite limited. It must be done not later than twelve months after the issuance of the certificate of fitness or after expiry of the defect liability period (Section 16N(2) of the 2002 Amendment, Regulation 3 of the Tribunal Regulations and Clause 26 and 30 of Schedules G and H of the HD Regulations respectively). Therefore in cases of latent defects which become apparent only after certain years, the Tribunal would definitely be unable to hear the claim. The MHLG and the Consumer Association of Penang and Consumer Association of Federal Territory of Kuala Lumpur and Selangor recorded that from the year 1999 to 2005, the highest number of complaints against housing developers was on defective houses as compared to other types of claims (including damages, payment, late delivery, interest, deviation of plan, services, fraud, deposit, transfer, infrastructure, violations of Act or Regulations and sale and purchase agreement).

Examples of complaints on defective houses from decided cases

The example of a complaint by a purchaser on the quality of workmanship may be found in the case of *Hwa Chea Lin v Malim Jaya (Malacca) Sdn. Bhd.* [1996] 4 MLJ 549. In this case, the purchaser of a single-storey house made a complaint on the defects of the foundation and structure of his house. It was found that the ground on which the house was built had sunk at different parts and the substantial different settlement on the land led to the cracks and tear of the building. The defects may be categorised as defect at sub-structure stage. The purchaser also complained that the developer had failed to observe the plan and specifications of house. The floor slabs had not followed the British Code of Practice emulated by the Malaysian practices, as the ground floor slab was 1 ½ inches and not 4 inches as the requirement under By-law 59(9) of the Uniform Building By-Laws, 1984 (UBBL). The cement content was also low and the piling had not been properly carried out. In practice the contractor shall supply for prior approval by engineer all relevant details of the method of piling and the plant he proposes to use. Any alternative method of piling specified by contractor shall be fully in accordance with the performance criteria specified. As regards to content of cement, By Law 53(2) of the UBBL provides that the use of any material or any method of mixing or preparing materials or of applying, using or fixing materials which conforms with a standard specification of code of practice either prescribing the quality of materials or standards of workmanship shall be deemed to be sufficient compliance with By Law 53(1) if the use of the material or method is appropriate for the purpose and conditions in which it used. For structural requirement, the cement aggregate should be greater than the aggregate of sand.

In the case of *Teh Khem On & Anor v Yeoh & Wu Development Sdn. Bhd. & Ors.* [1995] 2 MLJ 663 is another example of defects of houses due to poor workmanship at substructure stage. In this case, a group of purchasers of

double storey link houses found that the defects of their houses were due to settlement. The settlement happened as the fill of the building site was too thick, the material used as the fill was unsuitable and the foundations of the house were inadequate.

In *KC Chan Brothers Development Sdn. Bhd. v Tan Kon Seng*, [2001] 6 MLJ 641, twenty six house-buyers of low cost units complained that specifications of the building as shown on the approved plan and attached as part of the agreement has not been complied with. This include complaint on the single storey house that the height of the house was only 9 feet from floor to ceiling whereas the specification in the approved plan provide for 10 feet; asbestos ceiling was not installed whereas the specification in the approved plan provides for installation of asbestos ceiling; water PCC Vent with one layer instead of two layers; roof rafters were of various sizes and not made from hardwood whereas the specification provides for roof rafters from hardwood of size 2' x 4'; no hardcore flooring as provided in the specification; and the septic tank wall was only 4 ¾ inches instead of 9 inches thick as provided in the specification. The complaints on double storey houses were that the height of the houses was only 18 feet instead of 20 feet; no asbestos ceiling was installed and the septic tank wall was only 4 ¾ inches thick instead of 9 inches.

Low-cost housing and the implementation of CIS 1 and CIS 2

The Malaysian government embarked on public housing programme through its Five Years Malaysia Plan. At the initial stage, under the public housing programme, houses are constructed by the government agencies such as the municipal council and the state economic development corporation either for rental or sale. One of the social objectives of housing development in Malaysia is to provide low cost housing for those in needs. This policy is named as “democratisation of housing ownership” which means that every one could own a house. However the focus was for households with income of RM300 or less per month (Mohd Razali Agus, 1997). Through this policy private developers have been invited to participate in constructing low-cost units. At present it is a government policy that all private developers who undertake the housing development must ensure that thirty (30) per cent of the project shall consist of low-cost units. In fact the private developers have shown tremendous performance in delivering low-cost housing (Malaysia Ninth Plan) where the low-cost houses shall be sold at a controlled price. Besides that the function of the government to provide proper shelter to its lower income populations is now progressively done through the “Projek Perumahan Rakyat Termiskin” (commonly known as PPRT.)

In all of the above projects either developed by the public or private sector, must comply with the guidelines laid down by the CIS 1 (for conventional units including single and double storey houses) and CIS 2 (for sub-divided units, strata

building). The purpose of these guidelines is to ensure that all low-cost units will be constructed according to the acceptable standard that outlined by the government. Both standards will have to comply with the requirements of the Street, Drainage and Building Act 1976 (SDBA) as well as the UBBL. There are four parameters which have been taken as the scope and basis for these standards; safety, complete infrastructure, development of health and physical, and development of community. The standards in the CIS are divided into two parts; planning standard and design standard. No doubt that both CIS 1 and CIS 2 have promoted proper quality of life for the lower income group. However as far as the satisfaction of consumers in terms of quality of materials and workmanship is concerned, it always become one of the major complaints. Thus the problem of sub-standard workmanship and materials of houses are common either to houses under the category of low-cost houses or any other categories.

EXISTING INSTITUTIONS AND MEASURES TO CONTROL BUILDING QUALITY

There are three (3) main authorities in Malaysia having power to control building quality i.e. local authority, the MHLG and the CIDB.

a. Local Authority

(i) Approval of building plan

The approval of building plan is vested with the local authority where the local authority shall ensure that the applicant-developer has complied with all necessary rules and regulations, in particular the UBBL.

If the housing development involves construction of low-cost units, the local authority will have to check if the building plans submitted for approval are in compliance with the CIS 1 or CIS 2. It is within the power of the local authority to ascertain that the building plan is submitted by a qualified person. By-Law 5 of the UBBL provides that the responsibility to supervise the construction works until its completion lies on the qualified person who has submitted and certified the plans and specifications for building approval, and issued the Certificate of Completion and Compliance (CCC). Generally in Malaysian context, the qualified person would be an architect. Thus in cases of defective houses, a local authority has the power to act against an architect.

(ii) Issuance of Certificate of Completion and Certification

A new method of processing the issuance of Certificate of Fitness (CF) has been introduced and now it is known as the CCC. Prior to the amendment of several statutes governing the housing industry the process of issuance the CF was under

the jurisdiction and duty of the respective local authority. Under the CCC, the certificate of fitness is issued by any architect or building draughtsman or engineer upon completion of the construction of a house according to its plan and specifications as approved by the local authority. Under the CCC, the responsibility of the local authority is transferred to the professionals. The main issue here would be on the extent of independency of the professional involved. This CCC seems to be a move towards self-certification, which may remedy the problem of delay in issuance of the CF, but it may not be an answer to the problem of defective houses (Azlinor Sufian, 2007).

(iii) Supervision or inspection of construction work

The SDBA and the UBBL do not impose any specific duty on the local authority to inspect the construction work done by a contractor. As mentioned earlier this duty rests solely on the shoulder of a qualified person who submitted the plan. The local authority will only conduct an inspection if there is a report on failure of building (Section 70B, SDBA). A failure of building refers to defective building which may affect health and safety of occupants, such as failure of the structure. Therefore mere defect such as sub-standard quality of paint or uneven flooring may not fall within the meaning of building failure.

On the other hand it is worthy to note here that Malaysian house-buyers are not allowed to enter the construction site simply because the contractor as the occupier of the site does not want to be liable to the buyers (as a public person) in terms of their safety and health at the site. Under the Occupational Safety and Health Act 1994 (OSHA), the contractor of a site is under a duty to ensure (so far as is practicable) that the activities undertaken at the site do not expose any risk to the safety and health of the public (Section 17(1), OSHA). Since the activities at any construction site are generally hazardous that may cause accident and other related injuries to any person being there, the contractor has the right to prohibit the public from entering the site for the purpose of complying with their duties under the safety and health at work law. In practice, the contractor will normally put up danger or warning signs apart from barricading the site that prohibits any unauthorized person or the public member from entering the site without permission. Even though the contractor may allow the public to enter the site (provided the public who may be affected by the construction works at the site has been given a prescribed information on the aspects of their safety or health (Section 17(2), OSHA), usually the contractor is not willing to take responsibility in terms of having to give adequate information and taking necessary precaution and means of prevention of accident, so as to ensure that the public is safe while being presence at the site. Thus house-buyers would be considered as trespassers if they enter the construction site without the permission of the occupier (Rozaiah Ab. Rahman, 2007). Even if house-buyers are interested to make inspection (i.e. ignoring the

prohibition of the law), in reality there are many house-buyers who do not know at all the location of their houses while it is under construction.

The foregoing discussions reveal that the provisions of the SDBA and UBBL do not provide the legal framework for the local authority to exercise proper supervision or inspection of the construction works. Hence, the purchasers have to put their trust in a qualified person to supervise the construction of their houses. Nevertheless purchasers may be skeptical as to the credibility of the qualified person as he is engaged by the developer. Therefore house-buyers could expect that besides relying on the developer's architect to supervise and inspect the construction work, there should be a statutory requirement for this task by the building control authorities which has approved the building plan and specifications. Thus there is a need for a clear provision in the SDBA as well as in the UBBL that provides for a statutory duty of the local authority to inspect the construction of building.

b. Ministry of Housing and Local Government

(i) Licensing of developers

Housing development in Malaysia falls within the purview of the MHLG. No housing development may be undertaken without a license granted by the MHLG. The main law governing housing development in Peninsular Malaysia is the HDA. In Sarawak the applicable law is the Housing Developers (Control and Licensing) Ordinance 1993 (No. 5) and in Sabah, the Housing Developers (Control and Licensing) Ordinance 1978 (No. 24).

Under the HDA no housing development may be carried on, undertaken or caused to be undertaken except by a housing developer in possession of a license issued under the Act (Section 5(1)). It is an offence to carry on a business of housing development without a license, as decided in the case of *Kheng Soon Finance Bhd. v MK Retnam Holdings Sdn. Bhd. & Anor.* [1989] 1 MLJ 457; “.....to carry on a business of housing development without a license is a serious offence” The Controller of Housing has a power to revoke or suspend the license if he is satisfied that the licensed housing developer is carrying on his business in a manner detrimental to the interest of the purchasers or to any member of the public, or has insufficient assets to cover his liabilities, or is contravening any of the provision of the HDA or has ceased to carry on housing development in West Malaysia. Generally through the licensing system, the MHLG can control the activities of developers.

The imposition of HDA on the licensed developers will enable the authority to utilise its provisions to promote serious commitment from the licensed housing developers to deliver quality houses to their purchasers, particularly through the enforcement of Sections 6A, 6B, 7A and 11 of the HDA. Section 6A of the HDA may be used by the MHLG to make developers comply with the obligations imposed

on them through the standard sale and purchase agreement. Section 6A states that the controller has the power, subject to any direction of the Minister, to keep the deposit made under paragraph 6(1)(a) and (b) until the expiry of the defect liability period of the housing development. If the MHLG finds that a particular developer has not taken proper action in relation to complaints of purchasers on defects of workmanship or materials, the MHLG may use the power under this section to withhold the return of deposit until the rectification is completed.

Similarly Section 6B(a) of the HDA may be invoked by the authority in which the section empowers the Controller to forfeit the whole or part of the deposit if any licensed housing developer is carrying on his business, in the opinion of the Controller, *in a manner detrimental to the interest of purchasers* [emphasis added] or to any member of the public. This section may be considered as one of the methods to make developers comply with the terms and conditions of the sale and purchase agreement. Nevertheless under this section, the controller must be satisfied that non-compliance on the part of the developer with the terms of the sale and purchase agreement has really been detrimental to the interest of purchasers. This may be possible in cases of serious defects such as defect of workmanship for sub-structure works or in cases where the whole units of houses in the project are suffering from poor quality of workmanship and/or materials.

The concept of withholding and forfeiting the deposit above may be applied also towards the monies in the Housing Development Account. Section 7A of the HDA requires a developer to open and maintain a Housing Development Account for his housing project. The management of the Housing Development Account is specifically laid down in the Housing Development (Account) Regulations, 1991. It is provided in the regulations that all monies in the Housing Development Account may be withdrawn when the housing development has been completed; and the solicitor for the developer has certified that the obligations of the developer in respect of transfer of all titles under the sale and purchase agreements in that housing development have been fulfilled (Regulation 11). This regulation is to be read together with section 7A of the parent Act where all monies received by the developer from the sale of housing accommodation in the housing development shall be paid into the Housing Development Account (Regulation 7A(3)). Money in the account therefore includes the purchasers' monies (Regulation 4). Rectification of defects of houses is part of the developer's obligation towards purchasers in carrying out his duties as a licensed housing developer. Thus, if a developer does not discharge this obligation, it is possible for the Controller to withhold the release of all monies in the Housing Development Account.

Apart from that, the existing Section 11 of the HDA that vests powers in the Minister to give directions for the purpose of safeguarding the interests of purchasers should properly be enforced. The power of the Minister under this section is very wide where if the Controller is of the opinion that the licensed housing developer becomes unable to meet his obligation to his purchasers, the Minister may give

directions under Section 12 for the purpose of safeguarding the interests of the purchasers. These powers of the Minister may include giving directions to the licensed housing developer in question to take such steps as he may consider necessary to rectify any matter or circumstance (Section 11(1)(a)), direct that a person be appointed or himself appoint a person to advise the licensed housing developer in the conduct of his business (Section 11(1)(b)) or to take such actions as the Minister may consider necessary in the circumstances of the case for carrying into effect the provisions of the HDA. It is highly desirable that the Minister shall use his powers under this section if consumers are encountering a critical problem of poor workmanship and materials. Nevertheless in order to utilise the benefit of this section the consumers must present cogent evidence that a particular problem is really detrimental to their interest as purchasers. Therefore a minor problem of quality of finishing of houses may not be a good enough reason for the use of this power by the Minister.

(ii) Supervision of project

Being a ministry having power to issue the license for housing development, it is the duty of the MHLG to ensure that purchasers would be delivered the houses as prescribed by the sale and purchase agreement as well as to settle complaints on matters concerning housing. Currently there are three mechanisms used to supervise progress of housing development. It consists of supervision through documents (files), visit program and investigation (based on complaints). These methods seemed to be sufficient to monitor the project undertaken by developers. However due to lack of manpower, the site inspection will be conducted only upon receiving specific complaint from purchasers. This normally happens when purchasers noticed that claims for progressive payments issued by developers do not correspond to the stages of completion of work.

The new provisions of the HDA on the power of supervision and enforcement are more concerned with offences committed under the HDA and the Regulations there under. As for the problems related to the rights and obligations derived under the sale and purchase agreement, the ministry does not have direct power to take any action against the developer. Thus as far as the right for quality workmanship and materials of building are concerned, the MHLG does not have direct power to act except for giving advice to the developers.

c. Construction Industry Development Board

(i) Licensing of contractors

The licensing of contractors is done under the Construction Industry Development Board Act 1993 (CIDBA). The duties and functions of the CIDB are stipulated in the CIDBA. Generally the Act provides for the licensing of contractors and accreditation and certification of building materials. Even though the CIDBA is

not comprehensive enough to regulate the activities of contractors, the CIDB has engaged administrative mechanisms to promote the growth of the construction industry.

(ii) Training of skilled workers

The CIDB has no direct control over housing development in Malaysia as compared to the local authorities and the MHLG. Nevertheless as far as quality of building in the construction industry is concerned, the CIDB is the main authority which controls activities of contractors. It was contended that reliance on the unskilled labour to do manual work is one of the causes for shoddy workmanship (Viswanathan, M. et al., 1995). In Malaysia the availability of skilled workers is very important to ensure the quality of buildings since Malaysia is still using the conventional building system labour-intensive (Waleed A. Thanoon et al., 1997).

Under the CIDBA skilled workers are described as concreter, bar-bender, carpenter, bricklayer, mason, plasterer, paviour, tiler, painter, joiner, metal worker, drain layer, glazier, welder, construction plant operator, plumber and electrician (Section 32(2)). Being a paymaster to the contractors, a developer may indirectly be responsible to ensure that their contractors engage skilled workers since it would have a significant impact on the quality of the workmanship of the houses constructed. If developers could not care less on the engagement of skilled workers by its contractors but look for tenders with the lowest quotation, all these would contribute to the poor commitment of contractors to the quality of work of his workers.

Nevertheless it should be noted that the availability of skilled workers is also related to the capacity of the CIDB to train more workers for the industry. Through a circular dated 3rd January 2006 which has immediate effect, it is compulsory for contractors to register all its workers either local or foreign with the CIDB. The contractors must ensure that all construction works that require skill must be performed by skilled workers. Local and foreign construction workers shall sit for the accreditation test and will be awarded the “Sijil Kecekapan Kemahiran” (SKK) and the “Perakuan Kemahiran Pekerja Asing Binaan” (PKPA) respectively. The main contractors have to ensure that all its foreign workers who have been in Malaysia for 5 years must sit for the accreditation of skills process before obtaining the PKPA. They have to sit for the accreditation of skills process in every 3 years in order to obtain the PKPA. No renewal of working permit shall be issued by the Immigration Department if they failed the said test. Previously it would depend on the initiative of the employer-contractors to send their workers for training and accreditation. There are three methods of accreditation practiced by the Board. Firstly, short course training, secondly, work place assessment and thirdly, skills test. Contractors who fail to comply with these new requirements shall be liable for disciplinary action under the Regulations for Registration of Contractors, 1994 which may result in cancellation, revocation or suspension of their licenses.

In Singapore the control of level of skill of foreign workers is exercised through the scheme of Basic Skills Certificate. Under the scheme all foreign workers engaged by a contractor would have to meet the minimum basic skills standard. Through this scheme the construction firms are assured that workers being recruited have the basic aptitude and ability to do construction work and can be trained for higher skilled work. New foreign workers can obtain the Basic Skills Certificate in Construction Industry Development Board approved by overseas testing centres before they arrive in Singapore. The test ensures that the workers have the generic competencies expected of a construction worker, such as an understanding of fundamental concepts like dimensional accuracy, alignment, leveling, verticality and the ability to read basic drawings (CIDB Singapore, 1998).

On the other hand, for legal and administrative measure for accreditation of skilled workers, provisions of the Queensland Building Services Authority Act, 1991, are very useful as a comparison. The Queensland Act clearly spells out several classes of licences and its requirements for several categories of workers in the construction industry. Under the Act, the relevant licences for housing construction would be the licences for general building, house building, bricklaying, carpentry and joinery, concreting, steel fixing, gas fitting, painting, pest controlling, plumbing and draining, wall and floor tiling, roof tiling, plastering (solid and drywall), carpentry (formwork), stone masonry, metal fabricating, structural land scraping, glazing, insulating and water proofing application. Each and every type of the licences contained the scope of works, technical qualifications, managerial qualifications, and requirements of experience and financial means be it individual or company.

The Queensland Building Services Authority Act, 1991 which provides licences according to types of work is able to control the level of skill of the workers for that particular construction work and hence the quality of work can be controlled. The details of the requirements on how a worker is to be accredited as a skilled worker are laid down in the Act. This would help developers to scrutinise the qualifications of a particular worker. Thus under the Queensland Act, a developer would directly engage contractors who have the necessary skills to do a particular work.

(iii) Certification of Building Materials

Apart from training and accreditation of skilled workers, the CIDB is also a body responsible for certification of construction materials (CIDB Malaysia, 1998). In the context of Malaysian construction industry, the recognition of materials to be quality materials is dependent on whether it is certified by SIRIM Berhad. SIRIM Berhad is a government-owned company under the Ministry of Finance appointed by the Department of Standard Malaysia to develop a Malaysian Standard (MS). SIRIM is responsible for developing standards for critical products, systems and services. The approval of a standard as MS is governed by the Standards Malaysia

Act, 1996. The CIDBA has the duty to encourage the standardisation and improvement of construction techniques and materials but is not empowered under any provision to regulate the quality of construction materials. Similarly there is no other specific provision in the HDA or the CIDBA providing civil liability for developers or contractors who failed to use certified materials. Thus developers or contractors are free to choose any materials in the market that is less expensive regardless of quality. In order to require developers to use quality materials, the quality of products in the market should be controlled. Even though the specification in the tender document states that the materials must follow the MS, the availability of varieties of uncertified construction materials in the market with competitive prices would not assure consumers of their right to houses with quality materials unless developers do not sacrifice this right of consumers by using only items approved by SIRIM. Thus it is timely that there should be a legal mechanism on how the quality of construction materials is to be controlled. The certification of construction products would have positive impact on the standard of quality of these products.

SUGGESTIONS FOR IMPROVEMENT

Undoubtedly the implementation of practice of “build then sell” would be one of the methods of overcoming the problem of defective house. However since it is not compulsory on developers to utilise this practice, the following suggestions may be taken into account in offering better protection for house purchasers:

- a. The licensing system for housing developers should categorise developers according to their level of expertise, ability, resources or performance. This would be similar to the method of licensing of contractors as currently practice by the CIDB (in development work for the private sectors) and Department of Works (in construction works for the public sector) which categorised contractors according to the value of the construction works that are capable to be undertaken by a particular contractor.
- b. The MHLG should put into practice a vetting system in approving the application for licences. This can be done since the MHLG would normally have records of the performance of private developers based on the complaints received from the public. These records may be used as a yardstick before issuing a license to a developer who already had a bad performance record such as having various complaints from buyers on account of his shoddy workmanship and use of sub-standard materials in his previous projects. In these circumstances, even though the conditions for the issuance of a developer’s license to a company is more on its financial capability, the MHLG has a discretionary power to waive any or all of the conditions for a grant of a

license or substitute any or all of the said conditions with such other conditions as it may consider fit and proper and imposing further conditions that are related to the developer's performance. The phrase fit and proper may include an imposition of any condition as it thinks necessary.

- c. The MHLG should practice a system of demerit points to ensure developers seriously commit themselves towards building quality houses. The demerit points system may be operated through enforcement of a specific regulation, which provides for the awarding of certain number of demerit points to a developer if he has been convicted or found to have committed scheduled offences. Consequently, if a housing developer has scored a certain number of points, the Controller of Housing should be given a power to restrict that particular housing developer from obtaining a license for any housing development for a certain period.
- d. There should be a close link between the department which is responsible to process and approve the application for licenses (Department of Licensing and Services) with the department which controls the performance of the duties of developers and enforcement of the HDA (Department of Supervision and Enforcement).
- e. The developer's internal team of professionals may visit the site and inspect at random the units, to determine the quality of finishes incorporated into the houses. This would enable the developer to make necessary reviews and instruct for changes of materials supplied if the quality shown is not satisfactory. Developers may visit the suppliers' materials source in order to ascertain the quality of materials supplied. In order to avoid changes of supplier, it is better for the developer to require the contractor to forward samples of their products before they are used in the making of the building.
- f. CIDB should take serious effort in promoting developers to surrender their project to be assessed through the QUALITY system. QUALITY is an assessment system that sets out acceptable standards and measures by which a building could be assessed to conform to these standards at various stages of construction. Certain incentive should be given to developers in order to encourage them to submit their project to be assessed according to this system. The implementation of the system would be marked as a creation of benchmark for construction quality in Malaysia.
- g. The use of Industrialised Building System (IBS) should be promoted to developers. Besides minimising the problems of inadequate skilled workers and manpower in the construction industry, the utilisation of the IBS will assist developers to produce quality houses in which it will reduce the reliance on manpower. At present the construction of government quarters and the low-cost units are using the IBS. Thus the utilisation of the IBS may be promoted to be used by developers for other categories of houses also.

- h. The home warranty insurance as practiced in other jurisdictions such as in the United Kingdom and Australia may be considered. In these two countries purchasers are protected by the home warranty insurance for any building defects that occur within certain years. For instance in the United Kingdom the home warranty period offered by the National House Building Council against major structural defects is for ten (10) years. In the United Kingdom all developers must have home warranty insurance before undertaking the housing development. The finance company will not approve any application for financial assistance to purchasers if developers do not have home warranty insurance. (NHBC, 2003) In contrast, Malaysian purchasers are only protected for any building defects for twenty four (24) months. Thus if the home warranty insurance is imposed on Malaysian housing developers, purchasers will enjoy a better protection. Indirectly the imposition of home warranty insurance will encourage developers to be more committed to deliver quality houses because the records of building defects within their projects will become one of the determining factors for insurance company to offer their products to developers.

CONCLUSION

Since the problem of defective houses in Malaysia is so rampant, it is timely for the government to consider immediate steps to remedy the situation. It seems that the statutory provisions have conferred sufficient powers to the Ministry to monitor and supervise the performance of licensed housing developers. Nevertheless how far these powers are practically enforced by the MHLG still remains in doubt. The coordination of all the authorities concerned is very important, in particular the local authorities, the MHLG and the CIDB. These institutions should properly enforce the powers vested in them and take necessary steps to prevent non-committed developers and contractors from entering into the business of housing development and construction industry.

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