

MEMORANDUM

to
YB Dr Tan Kee Kwong
Timbalan Menteri Tanah & Pembangunan Koperasi
Kementerian Tanah & Pembangunan Koperasi
on

Strata title jam

In our dealings with the countless aggrieved house buyers we notice that the problem they faced are numerous. However, certain trend is emerging. Presently, the majority of the grouses, relates to delay or reluctance by developers in applying and obtaining strata titles for the subdivided buildings they have sold.

At the present rate that the Ministry of Land and Cooperative Development and their related agencies are attempting to tackle the issues and with the related Minister having conceded as reported in the The Sun newspaper published on 3rd March, 2003, that there is a lack of manpower and insufficient qualified personnel to undertake the issue of strata titles, we see the trend increasing drastically. This is unacceptable. There seems to be no effective recommendation taken by the Ministry to reverse the trend. More and more stratified properties are being built by the day. Some property owners have been waiting for 25 years for the issuance of strata titles.

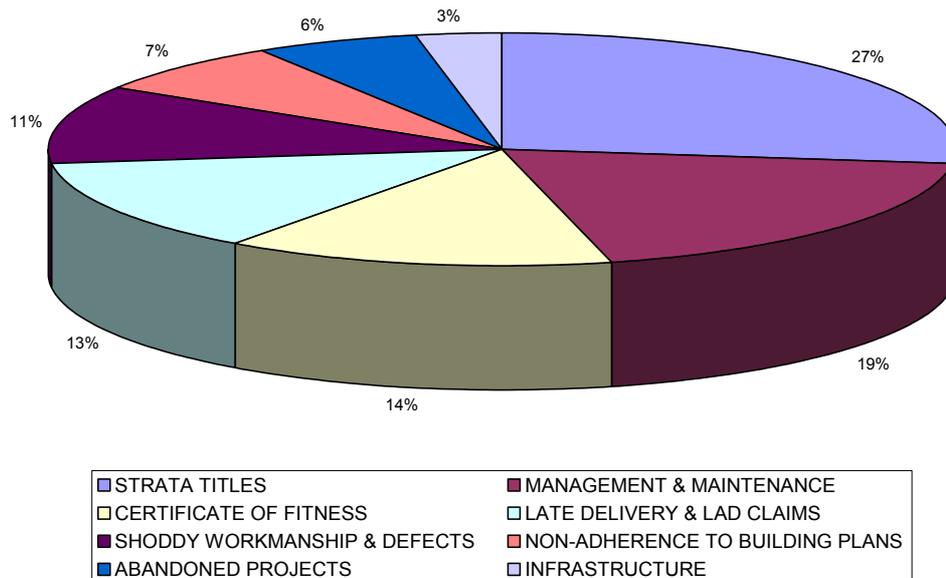
The Strata Titles Act (1985) (Act) has been around for 18 years and is not something new. The problems faced by house buyers can be categorized as follows:

- a) Old buildings (prior to the implementation of the Act) without strata titles.
- b) No/rejected application(s) made by the developer/land proprietors and no enforcement on the part of the authorities to compel the relevant party to make the applications.
- c) Orphaned projects, where the developer/land proprietor has been wound up, making it more difficult for strata titles to be applied.

The magnitude of the problem has been shrouded in a veil of denial. Unlike abandoned projects, little concern for the house buyers is shown by the relevant authorities where strata titles have not been issued. It is most likely, that since the house buyers are already 'lucky' that they are able to live in their units, that, strata titles do not become a priority. For those house buyers who are aware of the importance of strata titles, it often becomes an uphill task chasing their developers to quickly provide those titles as stipulated in their sale and purchase agreements. These buyers are fully aware that the sale and purchase agreement is only completed after the strata titles have been issued to them.

In our statistics maintained over the past 2 years, problem with strata titles top the list on an escalating trend. For the year ending 2002, there is an increase both in terms of percentage as well as absolute number. Non -availability of strata titles represents 27% of the total complaints received by HBA in the second year running. It will no doubt continue to top the chart for the third (3rd) and subsequent years to come, unless drastic measures are taken. Sadly, we do not see any.

COMPLAINTS 2002



HBA recommends the following:-

(a) Prosecution and not just mere warnings

For those errant developers/land proprietors who continue to blatantly disregard the laws by failing to apply for strata titles, the Ministry should prosecute them in Court for such breaches. Giving warnings with empty threats of prosecution is just not sufficient. With serious prosecution when laws are breached, only then would the issue be taken seriously.

(b) Penalise defiant developer and proprietors and/or their directors

If errant developers/land proprietors continue to drag their feet by deliberately not applying for strata titles, then the Ministry should pass a law to take over such task of applying for strata titles, either by themselves or through privatisation. Such costs and incidental expenses incurred should then be billed to the Developer/land proprietor. This would then not deprive the owners of stratified properties of their entitlement to strata titles. It will then achieve the objectives of the Strata Title Act to allow owners to form their Management Corporations.

Perhaps, a further law should be passed to make the directors and officers of the

Corporation liable to reimburse the Ministry of Housing or related agencies of whatsoever cost and expense that has been incurred incidental to the application and dissemination of the strata titles. We have got similar laws, like Sales Tax, where the directors are liable personally in the event of default by their Company.

(c) Create body to take over orphaned buildings to quickly give beneficial owners their proprietary rights

In situations where the developer/land proprietor has been wound up or where the Ministry is satisfied that they (developer) are insolvent or under such circumstances when the Ministry deem that the developer/land proprietor is incapable to apply for strata titles, such application for strata titles will be applied for by a "vehicle" similar the Syarikat Perumahan Negara (SPN) that salvages abandoned housing projects.

This suggested "vehicle" would undertake the task to ensure that strata titles will be applied to the Land Office and subsequently distributed to owners of stratified properties. In this way revenue will be collected in the form of stamping fees on the Memorandum of Transfer to the eventual owners, thus generating taxes for the Government coffer and overcoming the escalating strata titles woes.

(d) Pro active steps

Instead of waiting for house buyers to complain, the Ministry could take a pro active effort to initiate a survey to find out from the developers/land proprietors, local authorities, house buyers, on buildings without strata titles. Local councils and the Ministry of Land should be in close communication. The former should extend copies of Certificate of Fitness for stratified properties to the latter so that the Ministry could monitor and coordinate the overall picture. With the close cooperation between both the approving authorities, could we then see the light at the end of the dark tunnel on the subject of strata titles;

e) One stop center

The one stop center that some of the States have mooted has not been highlighted. Its success or failure is largely unknown. In the event that such one stop center has been progressing well then others should follow to see expeditious issuance of strata titles; and

f) The Malacca option

YB Dato Seri Wira Ali Rustam, the Chief Minister of Malacca has been the forerunner of the system i.e. "Developer to submit application for strata titles when they (the Developer) apply for building plans approvals; thus strata titles must be issued at the same time as the issuance of Certificate of Fitness" HBA has time and again suggested that the Ministry of Lands and Cooperative Development take heed of what is a good example and adopt the Malacca option that will eliminate the future non application of strata titles;

The above recommendations are not intended to be exhaustive. If quick and effective action to booster manpower and quality personnel, and proactive steps are not taken

immediately, we fear the day will come when the departments concerned will be so overwhelmed with backlog cases that something similar to the writing-off of unsettled traffic summons may need to be studied! Clearly somebody needs to quickly press the PANIC button. We cannot afford to have the problem persist and we must address the myriad of issues surrounding it. The Ministry of Land & Cooperative Development must ensure that strata title-type property buyers get their ownership titles. It is a solemn obligation on the part of this Ministry for the benefit of the house buying public. The interests of vendors – developers, land proprietors etc, should not take priority over the interests of homebuyers.

Dato Hj. Zainuddin bin Hj. Bachik
President
National House Buyers Association, Malaysia

17th April, 2003