

**Recent revamped Housing Development
(Control & Licensing) Act, 2003 –
Buyers' Perspective on Architects Role
and Obligation**

Joint Seminar by PAM & HBA

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9.30am to 1pm

Venue: Pertubuhan Akitek Malaysia (Malaysian Institute of Architects)
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A. INTRODUCTION

Good Morning Ladies and Gentlemen,

The National House Buyers Association [HBA] thanks PAM for inviting us to speak at this CPD Seminar today. HBA as you might know has been participating in PAM's Outreach Programme since 16th June, 2001, and as such, we play a cohesive role with PAM for the betterment of the housing industry.

The recent amendments to the Housing Law were prompted by the numerous complaints from house buyers. Although the complaints were directed at the developers and the inadequate protection from the law, architects too are not spared the brunt of the complaints.

B. DUTIES AND RESPONSIBILITIES THE LAW NOW EXPECTS OF ARCHITECTS

I. HOUSING DEVELOPMENT (CONTROL AND LICENSING) ACT, Revamped 2002

- Section 6. Conditions or restrictions for the grant of a licence.

The Law has been made more stringent for developers when they apply for a Housing Developers' licence and seeking the professional services of an architect. It is now made mandatory to appoint an **architect** whose name has not been cancelled or one that has been reinstated under the Architects Act, 1967 (Act 117).

- Section 7. Duties of a licensed housing developer.

In addition to the duties imposed in this Section, the Act has included four (4) new subsections, *interalia*:-

*“ (h) inform the Controller of the handing over of vacant possession of the housing accommodation in the housing development to the purchasers and submit a certified true copy of his **architect's** certificate certifying that the construction of the housing accommodation has been duly completed and that water and electricity supplies are ready for connection to the housing accommodation.*

(i) inform the Controller if the appropriate authority has refused to accept the submission of any document relating to the issuance of certificates of fitness for occupation and submit the refusal letter from the appropriate authority to the Controller;

(j) ensure that the development of the housing accommodation has been

carried out in accordance with any requirements prescribed under any law regulating buildings and has exercised all such diligence as may be required for the issuance of certificates of fitness for occupation and for the issuance and transfer of the titles to the housing accommodation to the purchasers; and

(k) inform the Controller of the progress in the issuance of separate or strata titles for the housing accommodation and the transfer of such titles to the purchasers.

These sub-sections' inclusion are welcomed by HBA in defining the role and responsibilities of developers and their appointed architects to buyers and to reflect the transparencies that very often is lacking especially between developers and the Local Councils. This requirement is imperative in order to exonerate the developers or the Local Councils from any possible blame from the house buyers.

- Section 13A. Controller to report the conduct of an architect or engineer.

The Principal Act was amended by inserting a new Section 13A which reads *interalia*:-

*“ Where the Controller is satisfied that the conduct of an **architect** or engineer of a housing developer has prejudiced the interest of the purchaser of the licensed housing developer, the Controller may report such conduct of the architect or engineer to his respective professional body.*

When buyers complained against any errant developers and their appointed professionals, the Ministry of Housing & Local Government could only recommend that the affected/aggrieved buyer lodge an official complaint to the relevant professional bodies. This process caused protracted correspondences and delays that infuriated the buyers as being let down by the Authorities. Thus they resorted to lodging complaints against the personnel of the Ministry of Housing to the Public Complaints Bureau (formed under the auspices of the Prime Minister's Department).

The inclusion of this new Clause should now empower the Controller of Housing to unilaterally lodge report of prejudicial conduct of wayward architects and engineers to their respective professional bodies, thus relieving the buyers of this unpleasant scenario.

**II. HOUSING DEVELOPMENT (CONTROL AND LICENSING) REGULATIONS
Revamped 2002**

- Clause 4. Schedule of payments. (Schedules G & H)

Clause 4(1) of Schedules G and H of the Principal Regulations is amended by inserting at the end of that sub-clause the words:-

“The Vendor is not bound to commence or complete the works in the order referred to in Third Schedule and the Purchaser shall pay the instalments according to the stage of works completed by the Vendor PROVIDED THAT any damage to the completed works by subsequent stage of works shall be repaired and made good by the Vendor at its own cost and expense before the Purchaser takes vacant possession of the said Building.”

The amendment is to facilitate flexibility of works and to allow modernization of construction works as construction methods do not necessarily follow a set sequence of operations. After the amendment, the Vendor is not bound to commence or complete the works in the order referred to in the Third Schedule and shall be entitled to claim progress payments of the purchase price from the Purchaser according to such works duly certified as completed. The safeguard to the Purchaser is that any work certified for payment which shall be damaged by subsequent stage of works shall be repaired and made good by the Vendor at its own cost and expense before the Purchaser takes vacant possession of the said Building.

- Clause 17. Infrastructure and maintenance. (Schedule G)

- Clause 19. Maintenance of Services (Schedule G)

Both these amended Clauses have been inserted after the words “*quantity surveyor*” the words “*architect or engineer appointed by the Vendor or with the approval of the Controller any other competent person appointed by the Vendor.*”

The amendments made are intended to allow any competent person other than the quantity surveyor to be appointed by the Vendor for purpose of apportionment of the appropriate contribution for the maintenance of services.

- Clauses 19, 21 and 22 of Schedule H - Payment of service charges, Insurance and Payment of Outgoings respectively

Where previously the apportionments of provisional shares of the payments were entrusted to the architects, the Law has decentralized them so as to pass the responsibility to the relevant professionals who are directly involved in the trade rather than having the architect to be the main superintendent officer of the project.

- Clause 24. Manner of delivery of vacant possession. (Schedule G) and corresponding Clause 27 (Schedule H).

One of the irrational situations suffered by buyers is that, handover of vacant possession do not give them the right to occupy their houses until certificate of fitness for occupation is issued. To address this problem, the new Clauses provides that the delivery of vacant possession must be supported by, firstly, the vendor's architect certifying that the relevant building has been constructed and completed in accordance with all relevant laws and regulations and that all conditions imposed by the Appropriate Authority for the issue of the CFO have been duly complied with.

Secondly, the vendor must provide to the purchaser a letter of confirmation from the Appropriate Authority certifying that the Form E under the Second Schedule to the Uniform Building By-Laws has been duly submitted by the vendor and checked and accepted by the Appropriate Authority. The recent amendment to by-law 25 addresses the issuance of CFO that the Appropriate Authorities must within fourteen (14) days from the date of acceptance of Borang E issue the CFO, failing which the CFO shall be deemed to be issued immediately after the expiry of the 14 days.

C. COMPLAINTS

I. Common Complaints

Here, we take a look at the common complaints against architects and the impact they have on the end-users that is the house buyers:-

- Premature certification
- Inaccurate certification
- Design flaws.
- Defects.
- Shoddy workmanship.
- Not built according to approved plans.
- Changes in Plans
- Changes in use of materials.
- Et cetera.

(See Exhibit A – LAM's General Circular No. 1/2002)

The following are excerpts of complaints from house buyers which HBA has received:

Excerpt No.1 – New Act means higher price to employ more qualified architects?

My Lembah Beringin project 'Heart' which is abandoned after 30-40 % work for the past 5 years told us that should the project be revived...we will only get 50 % compensation and that was said 2 years ago. If they revived the project in the next 3 years - maybe it will be 20 % compensation. And they said if we want more than we have to take them to court....How arrogant of this people.... But I am absolutely angry when Developers complained of the new Act because the developers are now held more accountable for the quality. The developers have to pass the new cost to the consumers by 15 % - 30 %. Because they now have to engage more professional and qualified architects, managers etc. Does this mean that all this time, developers have

been employing half rated professionals and thus the many defects etc? Can your association say something in an article or a letter to the papers? Otherwise I will do so myself. I am very disgusted with his comment - what a terrible admission that most developers take the consumer for a ride.

Excerpt No. 2 – Shoddy Workmanship

I would like to know where can a house buyers complaint if a Project Architect certified a shoddy work for houses that cost more than RM250, 000.00 eg. :-

- a. Laying of floor tiles (not in line and uneven) - not as per buyers' expectation which is worst than a low cost workmanship.
- b. The materials used or of low quality.

House buyers have made official complaints to the developer. The complaints we ignored as the developer said that the Project Architect has accepted the work done as good and as per specification. Furthermore, the developer informed that since it is laborious and messy to redo the tile works, buyers chance to get it rectified is slim or will not be entertained.

Since we have fulfilled our obligation without fail (i.e. Progress payment has been prompt and all claims and payment to developer had been settled). Our justification on why we complain are :-

1. The house purchased is not a low cost unit. i.e. more than RM250K
2. The developer is not willing to listen to our complaints.
3. How can the Project Architect certified such shoddy work for the developer?
4. How can the Majlis people ignored such workmanship as we all know that they are there to certified work and monitor the consultant's performances?
5. Who can we refer to on our disappointment?
6. Can we sue the Project Architect and get refund for all rectification work we do ourselves.

Please advice as information gathered is important to protect house buyers' interest.

Excerpt No. 3 – Architect's Certification

I would like to enquire my rights as a buyer on these matters:

1. Suddenly 35% is to be paid for progress payments (due date 23 & 25 respectively). Of which 10% is for roofing, electrical wiring, plumbing (without fittings), internal telephone trunking and cabling to the said building; 10% for internal & external plastering of the said building; 15% for roads, drains & sewerage works serving the said building.

As of 14 Apr (which I've personally checked), the walls not painted, parquet flooring for all rooms not laid, doors not fixed, sanitary & kitchen accessories not fixed, exterior drains not done. I know that the work/progress schedule doesn't cover all these, but there are so many things not put up or built yet. What can we do?

2. What about the architect who certified it prematurely?
3. What if the measurement for the lot is less than in the plan?

Excerpt No. 4 – CFO Problems and Defects

We are a buyer of an apartment in PUCHONG under a reputable Public Listed Company of which the project which we have bought have been delivered to us after the expiry of the Sale and Purchase Agreement. Not only we have to suffered the defects of the building handed to us (e.g. Water Leakage in both Toilets above the ceiling board, water stains/marks appeared on the wall of our unit which in technical term as water seepage) of which the developer have promised to look into while waiting for the Certificate of Fitness (Handing over of Vacant Possession was last year November 2000. Till today we are still waiting for the said Certificate, meanwhile, we have already started our loan repayments to the bank with no income forthcoming from our property. We need to know how to seek redress on compensation for late delivery and what is the time frame given to developer for the application for the Certificate of Fitness to us as housebuyers. It will be 6 months soon and we are still waiting.....

Excerpt No. 5 – Changes in plan

My problem is;
The project is divided in to two designs. The first design is "Mahsuri" - 20' x 60' with Front 22 feet and back 6 feet. The latter design is "Mutiara" also 20' x 60' but the front is 20 feet and the back is 8 feet. My S & P agreement state accordingly. I bought the "Mutiara" project because the Back yards is 8 feet, enough for an extension of the house. Which is at higher price. But now, They built it according to the "Mahsuri" which is 22 feet and 6 feet respectively. What can I do? I feel I am being cheated. If I know that they would built it with a back yard of 6 feet I would have not bought it. Hope you can help me on this.

2. Feel for the aggrieved house buyers.

The complaints from house buyers are genuine and real. The mistakes made by architects for non-adherence to professionalism would case misery, affect the tranquility of the mind, involve extra costs in maintenance and disruption of harmonious family life. Architects should play a vital role in projecting the image of elite and intelligent buildings that would blend harmoniously with the environment. Architects, engineers and developers are equally and severally to be

blamed for shoddy construction..

Now, put yourself in the shoes of the buyers who have suffered thus. Pause for one minute. Imagine having to live in the house that the wayward architect have just created and go through the sufferings of these unsuspecting buyers. Try evaluating the shortcomings of the house; you called your HOME.

D. ETHICS, PROFESSIONALISM AND SENSE OF RIGHTEOUSNESS

At times professional integrity and corporate loyalty may be in conflict. The principal concept is that the architect profession is difficult in that one does not have direct relationship with the house buyers but as a third party. The Client is not the end-users but their clients, that is, the house buyers. Think about the end-product, and imagine yourself chasing for the defects to be rectified or having to change your living arrangements when you are unable to move in at the scheduled handover of the houses.

Although, the architect is not a party to the sale and purchase agreement, the house buyers depend on your expertise to design and supervise the construction to safeguard their interest. The Management Corporation of Stratified Building depends on you the architects to ensure the building is defect free for them to manage and maintain when strata titles are issued. The registered architect should endeavor to ensure the competence and integrity of their design while assuming responsibility and liability appropriate to the services performed. The Architects Board has the responsibility to regulate the professional conduct of architects more specifically in cases of fraud, gross negligence, incompetence or misconduct.

Being censured, suspended or struck off the professional roll appears to be the final common pathway for wayward architects. However, the damage has been done. In some situations, because of the mistakes made by architects, the house buyer has to live with it, then his children, his grandchildren till the day the building dies, if there is such a thing. New buildings are assumed to last for decades.

See Exhibit B – Disciplinary Actions meted out to wayward Architects.

Paradoxical Situation

You have a situation where a developer appoints you - an architect, seeks hefty discounts on the professional bills, gives you assurance of future projects should you conform to their (developer) conniving attitude to seek pre-mature payments from unsuspecting buyers and end-financiers. Would you succumb to their ill-designed motive? Undercutting by foul means is evil if it is premeditated at the expense of house buyers. Do you want to be the fall guy for the developer? When it comes to disciplinary action, you stand alone in Court and to the Board.

An architect from heaven can't do much to build a good house for a client from hell. It works both ways. Ultimately, any failure from both sides, are borne by the purchasers.

E. CONCLUSION

Safeguarding the public in the design and construction of buildings and public works is a shared responsibility. The registered architect should endeavor to ensure the competence and integrity of the design while assuming the responsibility and liability appropriate to the services performed.

To accomplish these ends, HBA urge and seek the cooperation of PAM and its members to strictly exercise and observe the work ethics and professionalism of the trade so that the nation can be proud of the quality and designs of our own heritage and buildings. We encourage you and those whom you may supervise to use all due care and diligence in discharging your professional responsibilities to provide quality services and prevent acts of negligence, technical incompetence or lapses of ethics that could constitute a danger to the public. Then we can say that we are moving towards becoming a developed nation.

Thanks again to all Participants and Persatuan Arkitek Malaysia.

HBA