

# Purchaser grievances

PART 2

> Principal duties of a licensed developer

BY PRETAM SINGH DARSHAN SINGH

**L**AST week, our column highlighted the fact that we have an adequate, in fact, a most benevolent social legislation in place – the Housing Development (Control and Licensing) Act 1966, along with its various regulations made thereunder. Having briefly run through how the Build-Then-Sell (BTS) system will deprive house purchasers of complete legal housing protection, and the fact that there is sufficient legislative control, plus the Housing Tribunal for Homebuyers Claims where purchasers can put forward their grievances and claims, this week, we analyse the housing developers' duties.

Duties of a licensed housing developer includes the following:

- (a) within four weeks of the making of any alterations in or to any of the documents submitted to the Controller under subsection 5 (3), furnish to the Controller written particulars of the alterations;
- (b) exhibit at all times in a conspicuous position in any office and branch office of the licensed housing developer and at any other place where a sale of housing accommodation is conducted, a copy of his licence, advertisement and sale permit and a copy of his last audited balance-sheet as soon as the same is available and such information as the present or former full name, usual residential address, nationality, nationality of origin (where the present nationality is not that of origin), business or occupation (if any) of each person who has the control and management of the business of the licensed housing developer and particulars of any other directorship held by that person;
- (c) keep or cause to be kept in his office in West Malaysia such accounting and other records as will sufficiently explain the transactions and the financial position of the licensed housing developer and enable true and fair profit and loss accounts and balance-sheets and any documents required to be attached thereto to be prepared from time to time, and shall cause these records to be kept in such manner as to enable them to be conveniently and properly audited;
- (d) annually appoint an auditor or auditors in the manner required under section 9;
- (e) within six months after the close of the financial year of the licensed housing developer in question, send to the Controller and also publish in the Gazette, a copy of the report of the auditor prepared under section 9 together with a copy of his balance-sheet and profit and loss account;
- (f) not later than the 21st day of January and the 21st day of July of each year or at such frequency as may be determined by the Controller from time to time or upon the request of the Controller, send to the Controller a correct and complete

statement in writing made on oath or affirmation, in such form and containing such information as the Controller may from time to time determine, on the progress of the housing development which the housing developer is engaged in, carries on or undertakes or causes to be undertaken until the certificate of completion and compliance have been issued for all the housing accommodation in that housing development;

- (g) where he considers that he is likely to become unable to meet his obligations to the purchasers at any stage of the housing development, before the issuance of the certificate of fitness of completion and compliance, forthwith inform the Controller of such fact;
- (h) undertake the following:
  - (i) within twenty-one days from the date of receipt by the housing developer of the certificate of completion and compliance, submit such certificate to the Controller; and
  - (ii) within twenty-one days after the date of handing over of vacant possession to the first purchaser of the housing accommodation in the housing development, inform the Controller in writing of the handing over;
- (i) inform the Controller of any refusal in the issuance of the certificate of completion and compliance;
- (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 the certificate of completion and compliance 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 at such frequency as may be determined by the Controller beginning from the date of the handing over of vacant possession to the first purchaser of the housing accommodation in the housing development until the separate or strata titles for all the housing accommodation have been issued.

## DUTY IN RELATION TO ADVERTISEMENTS

No advertisement or sale shall be made by any licensed housing developer without an advertisement and sale permit having first been obtained from the Controller.

Any advertisement and sale shall be in accordance with the advertisement and sale permit as approved by the Controller. (Reg 5). This means that no advertisement can be carried out, including registration exercises, unless that advertisement is first submitted to the Controller of Housing for approval.

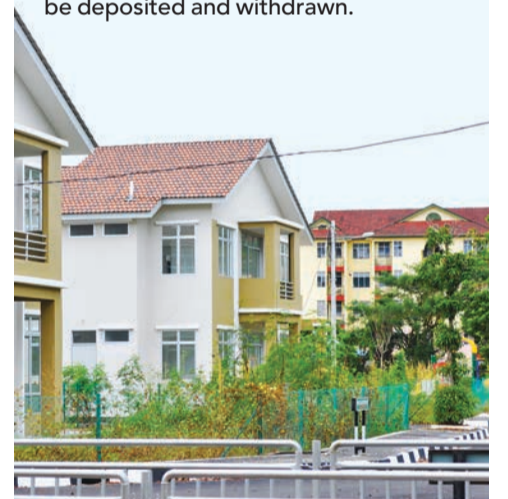
The following mandatory information have to be provided in all advertisements, namely:

- (i) any advertisement (other than those conveyed by means of broadcast sound receivers or through television receivers) made by any licensed housing developer shall include the following particulars:
  - (a) the housing developer's licence number and validity date;
  - (b) the advertisement and sale permit number and validity date;
  - (c) the name and address of the licensed housing developer and his authorised agent, power of attorney holder or project management company, if any, as approved by the Controller;
  - (d) the tenure of the land if the land is leasehold, its expiry date, restriction in interest and encumbrances, if any, to which the land is subject;
  - (e) the description of the proposed housing accommodation;
  - (ea) any parking lot which is an accessory parcel to the housing accommodation in a parcel and which does not form part of the common property of the accommodation;
  - (f) the name of the housing development, if any;
  - (g) the expected date of completion of the proposed housing development;
  - (h) the selling price of each type of housing accommodation;
  - (ha) where applicable, the minimum and maximum selling price of each type of housing accommodation;
  - (i) the number of units of each type available; and
  - (j) the name of the appropriate authority approving the building plans and the reference number. (Reg 6)

## DID YOU KNOW?

### Duty to open and operate a housing development account

Section 7A of the Act requires all developers to open and maintain a Housing Development Account, unless the developer is implementing a "Build & Sell" system, with a bank or a financing company for each housing development undertaken by him. There is also a strict regime on what ought to be deposited and withdrawn.



## THE STANDARD SALE AND PURCHASE AGREEMENT (SPA)

Every contract of sale and purchase (SPA) of a housing accommodation, together with the subdivided portion of land appurtenant thereto shall be in the form prescribed in Schedule G and where the contract of sale is for the sale and purchase of a housing accommodation in a subdivided building, it shall be in the form prescribed in Schedule H.

No housing developer shall collect any payment by whatever name called except as prescribed by the contract of sale. (Reg 11)

CITY INVESTMENT SDN BHD v SERBAGUNA CUEPACS TANGGUNGAN BHD [1985] 1 CLJ 131 Mohamed Azmi FCJ

"If you have required your homebuyer to sign a contract that supplements the Sales and Purchase Agreement, it may be an offence as there can only be one agreement between homebuyer and Developer."

"... the parties may not contract out of the contract and to do so is an open defiance of the Housing Developers legislation".

This standardisation of SPA is the most effective way to ensure that purchaser's rights are protected. In a BTS system, there will be no standard SPA to accord protection. Hence, there will be calls for a Fair Housing Act.

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# Housing affordability

> Issues, effects and areas to examine

INSIGHTS

**WHAT** is the meaning of the word "affordability"? According to a business dictionary, it is a **conclusion drawn from the analysis of the life cycle cost of a proposed acquisition; that the purchase is in accord with the resources and long-term requirements of the acquirer.** A shorter and simpler explanation would be **one's financial means in relation to a purchase.**

## CONTEXT AND CIRCUMSTANCE

With that, we probe a little further, questioning one's financial means where house purchase is concerned. Is the average income earner able to purchase a roof over his head and live reasonably comfortably today? How much would he or she need to earn? And if good employment and better salaries are found in the main cities and big towns, are there affordable houses readily available in these urban areas? What kind of price tags do affordable houses come with? How affordable is affordable? Ultimately, the big question is, is there an issue where housing affordability is concerned?

To answer all this is Dr Yeah Kim Leng, dean of the School of Business at the Malaysia University of Science and Technology (MUST). Yeah has a Masters in Business Administration and holds a PhD in Agricultural and Resource Economics, specialising in development economics. He was previously the group chief economist of a local rating agency and managing director for its research and consultancy firm. Prior to that, he held the post of senior analyst at the Institute of Strategic and International Studies Malaysia where he was involved in research on various national economic policies.

According to Yeah, **housing affordability is a complex socio-economic issue with important political implications.** "First, let me explain what housing affordability is. It is basically the ability or inability to own a house or have a permanent roof over one's head," he says. With that, we ask then, how do we know when housing affordability becomes a major concern. "At the national level, we track overall affordability in several ways. One index compares house price increases with income increases. If the ratio is below one, then the rise in income has not kept pace



with house price increases, indicating a decline in housing affordability. We can track this by state and by housing segment."

For a clearer picture, refer to the graphs below taken from a research headed by Yeah in 2012.

"Another index is calculated by assuming that not more than half of the gross monthly household income goes into repaying the loan taken to buy the house. If there are a few bread earners living in the same house who contribute to the payment of the property, then not more than 50% of their combined income should go into paying the instalment/rent of their house." This index is useful to provide a gauge on affordability by house price and income segments," explains Yeah.

## POINTS IN QUESTION

Yeah further shares about the issues pertaining to housing affordability. He claims there are **three main issues** which are:

- 1) the rapid rise in house prices across all segments;
- 2) insufficient supply to meet demand; and
- 3) mis-match in the supply of affordable homes.

"House prices have increased tremendously, especially in the last five years. Looking at house prices some 10 years or more ago, there was a gradual increase of

about 3.2% in the prices every year. But in the last five years, the average annual increase has risen to 9.7%. At the rate prices of houses are increasing, it is not sustainable as the rate of income growth is not rising as fast. And if house prices continue to spiral at the rate it is rising at, the housing market will either face a soft landing or a market crash, depending on how high it peaks," informs Yeah. The positive outcome is that it will lead to a more gradual and sustainable rate of increase in house pricing, one that is in line with the rise in income.

Touching on point two, Yeah says, "According to census figures published by the Department of Statistics, there were 6.8 million households compared to the 4.8 million housing stock in 2012. Rental properties made up 20% of the housing stock. This means that the total number of households that did not own a house summed up to about 3.8 million. We then subtract the incoming supply of 0.73 million units, and the planned supply of 0.62 million units, and found there was still a housing shortage of 2.5 million homes." Yeah then cited the 200,000 additional new households (based on yearly estimated figures), concluding an estimated shortfall of 2.7 million housing units, still.

We deliberate the fact that house prices

within the KL metropolitan city and Klang Valley have sky-rocketed, so much that it is rare to find one within the city limits for less than RM1 million. This leads to his third point of which Yeah expounds, stating that the **current housing supply in urban areas are hugely beyond the reach of the low and middle income groups.** "Research showed that 55% of the 6.8 million households have a monthly income of less than RM4,000, which points to the fact that this segment of society can only afford houses priced around or below RM360,000." Interestingly yet frighteningly, we arrive at many implications on how just the **affordability issues could slowly but surely affect lifestyles, and eventually the socio-economic health and political stability of the country.** (See Graphs C and D)

## ADDRESSING THE ISSUES

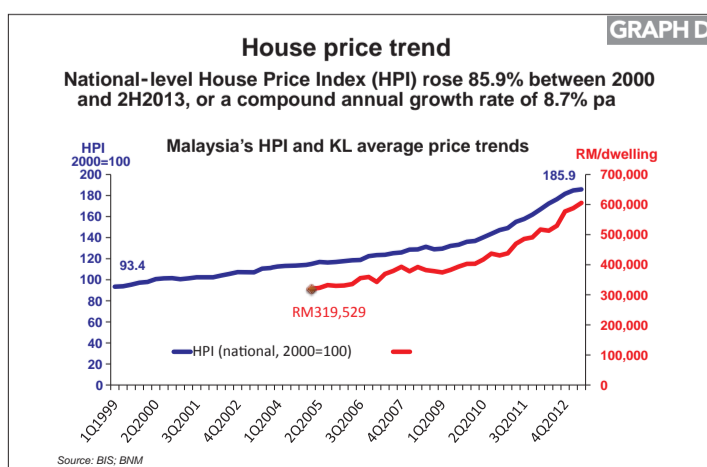
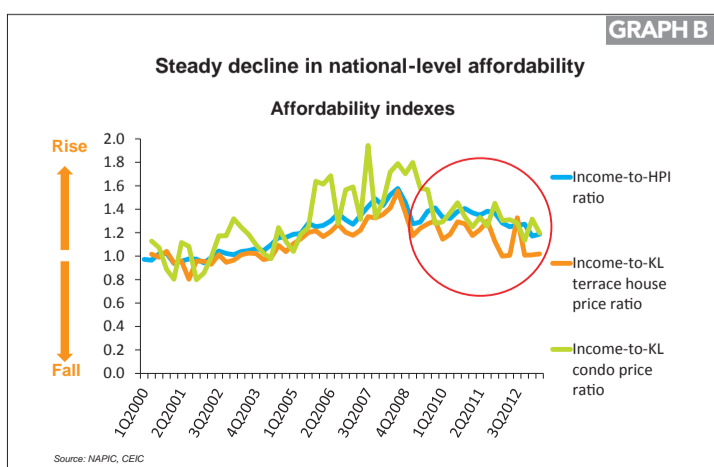
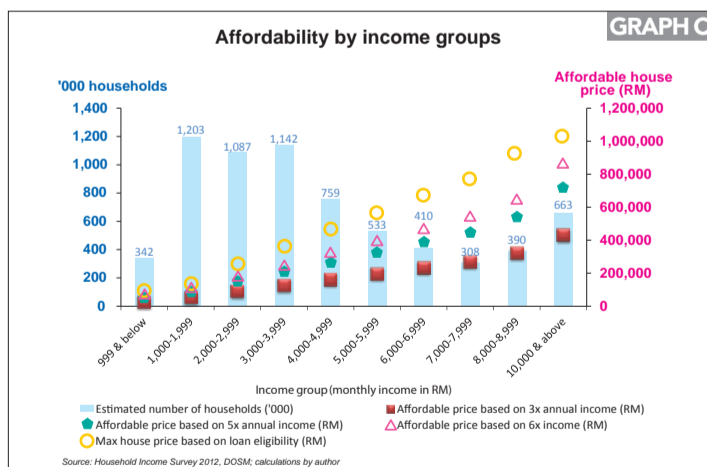
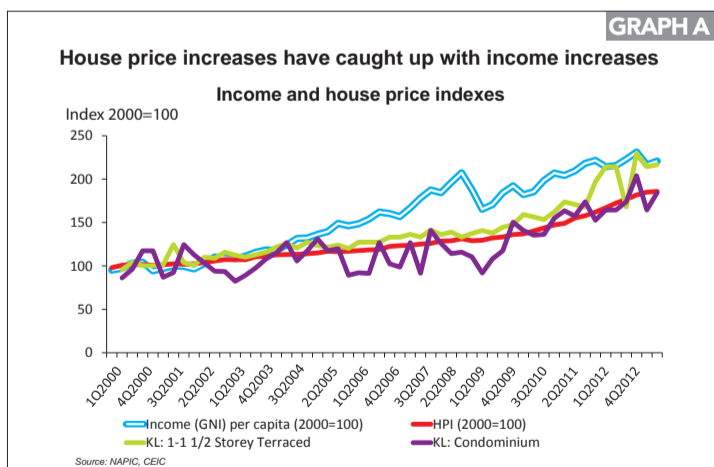
As it took years for such issues to crop up, likewise, good foresight, the collaboration of various industry-related players and governing bodies, effective monitoring of enforced rules and time, can bring positive change. "**Monetary, fiscal and housing policies need to be aligned, looked into and perhaps fine-tuned to smoothen out soaring house prices so it does not exceed an average of 3% to 4% annually over several years.**" This can be achieved through a combination of supply-side and demand-side measures," Yeah recommends. On the supply side, he adds that given Malaysia's relatively low population density, the challenge is to **increase supply of homes that are priced to the pockets of the masses.** "There is a need to cap expectations and sentiments that house prices only go north. But as seen in the recent property market crash in the developed economies, prices can fall 30-70%. On the demand-side, rising house prices have ignited speculative demand, especially for those who see property investment as a hedge against inflation," he adds.

Yeah also raises the fact that we must be aware that urban housing trends and lifestyle changes need to cater to the ever-changing demographic needs and patterns. He urges the government to intervene, especially to boost the chunk of the housing shortage problem, which is to **accommodate those in the low and middle income segments with affordable housing, especially in urban areas.** For a start, he highlights some areas that could be examined and further explored, such as:

- ▶ provision of adequate and cost-effective basic amenities and transport infrastructure;
- ▶ release of state-owned land for housing;
- ▶ establishment of public-private partnerships in township developments;
- ▶ promotion of industrialised building systems (IBS); and
- ▶ innovations in low- and medium-cost building design, construction and financing.

Still, although figures and charts may determine one's capability of owning a house, there are other factors to bear in mind - the list of additional expenses that come with owning a house and running a home. These include electricity, water and sewage bills, not forgetting the twice-yearly property assessment tax and annual quit rent. For owners of high-rise units, there is the management, maintenance and parking fees, along with today's internet, telephone and cable or satellite TV charges, plus a longer list of household and lifestyle expenses, which are higher if one has a family to upkeep.

\*\* Research and graphs are based on figures taken from a Department of Statistics survey done in 2012.



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# Maximalist VS Minimalist

> Simple ways to achieve these looks aesthetically



It is the end of the year and many are into, if not already, spring cleaning their homes. This is usually the time many people do away with the old to make way (space) for the new. Resolutions are made and where the home front is concerned, new themes and decorating styles are sometimes taken on in line with the start of the new year and hope for better beginnings with a fresh start.

As the crowd is either donating or giving away that which can be used, or throwing out what can't, re-decorating is usually done this time of year. With that, we ask: Are you a maximalist or a minimalist? Whether you follow the less is more approach or prefer to go all out with your decor, there is no doubt that both interiors display character.

"People's jaws drop when they enter my room," says maximalist Ann Jacobs, "I've been called messy, a hoarder, and even insane, but I call it a room with substance."

On the other hand, Steven Yong is said to be a minimalist. "I stay alone, so I decorated my apartment the way I wanted it. It is pretty bare, with no unnecessary frills and that translates into boring for some, but I like the simplicity and Zen that comes with it. It is my personality."

Whichever category you fall into, the following tips will help you approach these looks aesthetically, avoiding extremities.

## MAXIMALIST INTERIORS

If there is one decor style that stops people in their tracks, it would be the maximalist. Compelling for its boldness, it is not for the faint-hearted. To its gutsy adherents, there is no better mode of self expression.

The term maximalist can be interpreted as busy or cluttered, though when approached mindfully, maximalist interiors can be both stylish and visually stimulating.

A whirlwind of creativity, it is eccentric,



## Four signs you may be a maximalist

- ▶ You have more than four favourite colours.
- ▶ Florals make you excited.
- ▶ There was never a pattern you did not like.
- ▶ You have more than one collection of collectibles.

theatrical and captivating all at once, but how much is too much?

"The maximalist interior is all about striking a balance between curating a space and over decorating, and this is no easy task... it needs a lot of thought," says interior designer Jillian Woo.

Here are tips on how to get the look.

### ▶ Work with your collectibles

The great thing about maximalist interiors is that when done right, you can creatively work with what you already have and create an entirely new look. Start by taking note of all the vintage ornaments, travel keepsakes or personal artworks that you have accumulated over the years and separate them according to type. Decide what group of items you want to work with and incorporate it into your décor accordingly. For instance, if you have a collection of colourful tea light holders, embroidered cushion covers and a Persian carpet, you can work these items into an Indian or Persian themed room.

### ▶ Complement with layers

Effective layering is fundamental to maximalist interiors, and the look cannot be achieved by simply combining different styles haphazardly. Each style or design feature must be carefully selected, based on how it will integrate with other pieces and what it will contribute to the room.

"To work with this approach, start with a theme in mind... for instance safari. Select the colours or patterns



that go with this look, such as yellow, black and animal print, and work from there," says Woo. By establishing a baseline, you can figure out how other pieces or design elements will fit in. This also ensures that you are not left with a clutter of unrelated items.

### ▶ Go heavy with ornamentation

"A few heavy ornamental touches are all it takes to give a room a maximalist style," explains Woo. To make a room stand out, "go for highly decorative, thick, baroque photo and mirror frames in gold colour," she adds.

Other ornamentation ideas include velvet, silk and organza fabric with heavy overlays. These make for perfect cushion covers, curtains and table runners for this particular interior style.

"Bunches of brightly coloured flowers are also trendy in maximalist interiors now, so choose a few colours and varieties and place them in copper vases for a wow factor."

## MINIMALIST INTERIORS

The famous Leonardo da Vinci said that simplicity is the ultimate sophistication. If you agree with this, you could be a minimalist. Minimalist interiors have become prevalent in recent years, especially with homeowners acknowledging the benefits that come with a clean, clutter-free home environment.

"Minimalist interiors can be implemented in any room but you have to remember that there can be a fine line between minimalist and boring," says Woo.

Here are some suggestions to achieve this kind of look.

### ▶ Contemporary look

This particular approach aims to create a visual distraction in an otherwise monotonous minimalist room. The look is achieved by incorporating one piece of furnishing, of a different colour, style and pattern from the rest of the furnishings, and blending it in. For example, in a predominantly blue dining room with a glass dining table with blue chair coverings and curtains, you can place a grey and black carpet with swaying patterns

underneath the table.

"Minimalist interiors are often associated with being bland and this look addresses that issue. The extra addition will not clutter the room, it simply adds colour and pattern to an otherwise neutral looking space," says Woo.

### ▶ Ornamental cohesion

To introduce aesthetic cohesion in a minimalist a room, Woo recommends arranging movable décor such as cushions and coffee table books asymmetrically, leaning on one another. To get maximum visual impact from this tip, these items should be placed in a part of the room where the eyes go toward first when entering.

"Use between two to four items.

The goal here is to add visual harmony to the room and not overpower it with too many things."

### ▶ Bring the outdoors in

For a subtle but noticeable change to make a subdued minimalist room eye-catching, Woo suggests bringing the outdoors in. Highlight the clean, horizontal furnishings of the indoors with the light and landscape of the outdoors. Use this as décor. "In general, window furnishings should be avoided to remove any distraction. If it is absolutely necessary, it is best to use sheers that can be drawn completely, in order to allow plenty of natural light in with a view of the landscape from the outdoors."

With that and the new year just round the corner, let us dare to be different and do the unexpected. Maximalist or minimalist, it is your call. Happy New Year and happy decorating!



## Five benefits of a minimalist home

- ▶ Makes cleaning faster.
- ▶ Less clutter means less mental stress.
- ▶ Minimal spending on maintenance and purchases.
- ▶ Cutting down on purchase less effects the environment.
- ▶ Fewer things means less dust, dirt and allergies.

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