

## **LETTER OF SUPERVISOR CONFIRMATION**

I, hereby declare that have read this thesis and in my perspective this thesis is sufficient in terms of scope and quality. This project paper is submitted to Universiti Teknikal Malaysia Melaka as a requirement for completion and reward of Bachelor's Degree of Technology Management (Technopreneurship).

Signature : \_\_\_\_\_

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Date : 20<sup>TH</sup> JUNE 2014

CONSUMER PROTECTION  
&  
HOUSING DEVELOPMENT (CONTROL AND LICENSING) ACT 1966

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Project Paper Submitted in Partial Fulfilment of the Requirement for the Bachelor's  
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## DECLARATION

“I declare the entitled report „Consumer Protection and Housing Development (Control and Licensing) Act 1966“ is my own work except the summary and each of which I have mentioned the source”

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Date : 20<sup>TH</sup> JUNE 2014

## **DEDICATION**

Special dedication to my family, especially mom and dad who has given a lot motivate directly and indirectly. Also for supervisor who always understands. For beloved friends known as GC4, you all are always in my memory. Lastly, special dedication to my sweetheart, who has given words of encouragement for the completion of this task. You hold a special place in my heart.

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Appreciation is also enunciated and addressed to my respondents, homebuyers in Peninsular Malaysia. All feedbacks and opinions provided are very important and it has helped me to conduct this study to succeed.

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## ABSTARCT

Housing Development (Control and Licensing) Act 1966, (HDA) provides for the control and licensing of the business of housing development in Peninsular Malaysia, the protection of the interest of purchasers and for matters connected therewith. This study examines consumer protection under the HDA against housing developers' exploitations. The purpose of the study is to identify the duties of a developer in ensuring a sustainable construction project; examine the extent of consumer's protection under Tribunal for Homebuyer Claims in Peninsular Malaysia; and identify the factors that lead to project failures. The method used in this study is survey questionnaires distributed to 100 home buyers and 100 usable data in Peninsular Malaysia. These home buyers have encountered problems ranging from abandoned housing project, projects delays, project release including non-compliance with the Sale and Purchase Agreement. The findings of this study found there is positively relationship between Tribunal and Sustainable Construction to ensure consumer's rights are protected. Conversely, the Tribunal provides an avenue for home buyers against defaulting developer, whilst to sustainability construction ensures that natures are preserved. On the contrary, it was found that legal compliance has no relationship with consumer protection. This is due to lack sidle cultures and the fact that law enforcement in Peninsular Malaysia is still lacking. This concurs, with the objectives of the research undertaken. The research aids home buyers to file complaints and the legal enforcers in developing a proper framework to support consumers in seeking avenue against unscrupulous developers.

Keywords: consumer protection, homebuyers, Peninsular Malaysia

## ABSTRAK

*Akta Pembangunan Perumahan ( Kawalan dan Pelesenan) 1966, ( HDA ) memperuntukkan kawalan dan pelesenan urusan pemajuan perumahan di Semenanjung Malaysia, melindungi kepentingan pembeli dan bagi perkara-perkara yang berkaitan dengannya. Kajian ini mengenai perlindungan pengguna di bawah HDA terhadap eksploitasi pemaju perumahan. Tujuan kajian ini adalah untuk mengenal pasti tugas-tugas pemaju dalam memastikan projek pembinaan yang mampan ; mengkaji sejauh mana perlindungan pengguna di bawah Tribunal Tuntutan Pembeli Rumah di Semenanjung Malaysia; dan mengenal pasti faktor-faktor yang membawa kepada kegagalan projek. Penggunaan kaedah dalam kajian ini adalah soal selidik kajian diedarkan kepada 100 pembeli rumah dan 100 data yang boleh digunakan dalam Semenanjung Malaysia. Pembeli rumah telah menghadapi masalah yang terdiri daripada projek perumahan terbengkalai , projek kelewatan, pembebasan projek termasuk tidak mematuhi Perjanjian Jual Beli. Hasil kajian ini mendapati terdapat positif hubungan antara Tribunal dan pembinaan lestari untuk memastikan hak pengguna dilindungi . Tribunal menyediakan ruang bagi pembeli rumah terhadap pemaju ingkar , manakala pembinaan kelestarian memastikan sifat dikekalkan. Sebaliknya, ia telah mendapati bahawa pematuhan undang-undang tidak mempunyai hubungan dengan perlindungan pengguna. Ini adalah hakikat bahawa penguatkuasaan undang-undang di Semenanjung Malaysia masih lagi berkurangan . Ini sejajar dengan objektif kajian yang dijalankan. Kajian ini sebagai alat bantuan kepada pembeli rumah untuk memfailkan aduan dan penguatkuasaan undang-undang dalam membangunkan rangka kerja yang betul untuk membantu para pengguna dalam mencari jalan terhadap pemaju yang tidak bertanggungjawab.*

*Keywords: perlindungan pengguna, pembeli rumah , Semenanjung Malaysia*

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## LIST OF ABBREVIATIONS

HDA	=	Housing Development (Control and Licensing) Act 1966
SPA	=	Sale and Purchase Agreement
SPSS	=	Statistical Package for Social Science
Tribunal	=	Tribunal for Home Buyer Claims

## CHAPTER 1

### INTRODUCTION

#### 1.1 Background of the Study

Housing Development (Control and Licensing) Act 1966 (HDA) provides for the control and licensing of the business of housing development in Peninsular Malaysia, the protection of the interest of purchasers and for matters connected therewith. This study examines consumer protection under the HDA against housing developers' exploitations.

Lately, there are many reported cases of abandoned projects, and many consumers who are seeking justice, particularly those who have made the payment. Starting from January 2003 to 30 June 2012, a total of 177 cases of abandoned housing projects have been reported in Malaysia (The Ministry of Housing and Local Government Malaysia, 2012).

A housing project in Malaysia is regarded as abandoned if construction project is not completed or the housing units are not ready for occupation. MLHG has set four conditions, if one or more are met, then the project will be declared abandoned. The four conditions set up are (1) no construction activities on site for six months or more, (2) the developer winds up, (3) the developer declares an inability to complete the project, and (4) the MHLG declares the project abandoned pursuant to the Housing Development Act (118).

Usually, the abandoned project due to the several factors, including of the economic downturn (such as the financial crisis in 1997), the contractor experienced financial crisis, poor in site selection for the development, weaknesses in financial management among the developers company, and so on. At some level, all these problems will be used as an excuse by developers after the consumers wants to uphold justice and their rights as a consumer. Hence, consumer protection is very important to protect and maintain consumer's rights from being violated by the troubled developer.

In addition, there are also developers who break the agreement have been agreed by selling the house to consumers without complete specifications noted in Sales and Purchase Agreement (SPA). Deficiency include: an area of the house is not enough, plumbing and electricity is not supplied and so on.

Every consumer must understand that their position has always been protected by various public acts and related acts to 'Consumer Protection'. The concept of 'Consumer Protection' itself is associated with the legal power to preserve and protect the rights of consumers from being exploited, cheated, oppressed and misled by producers (industry), trading companies, suppliers and dealers. Among the purposes of the law relating to consumer protection established to ensure the safety of consumers, consumer health, consumer economic interests, personal information and consumer redress.

## 1.2 Problem Statement

The research conducted based on the cases of facing by consumers when they are dealing with developers. There are some problem statements as specified below:

1. Many cases of abandoned housing projects have been reported (please refer to the appendices B and C).
2. Houses completed are not accordance to specifications of Sales and Purchase Agreement.

## 1.3 Research Questions

The main point to be discussed is the strengths of consumer protection under the HDA. Are they really protected in the event of any problems arising? The research question is simplified as follows:

1. What are the duties of a developer in ensuring sustainable construction project?
2. How far are consumers protected under Tribunal for Homebuyer Claims in Peninsular Malaysia?
3. What are the factors that lead to project failures?



## **1.4 Research Objectives**

Objectives highlighted in this report are based on the question of the problems have been identified. The specific objectives are as follows:

1. To identify the duties of developers in ensuring a sustainable construction project.
2. To examine the extent of consumers protection under Tribunal for Homebuyer Claims in Peninsular Malaysia.
3. To identify the factors that lead to project failure.

## **1.5 Scope, Limitation, and Importance of the Study**

The scope of this study is conducted in Peninsular Malaysia and the reference made is HDA. This study is limited to cases and respondents in Peninsular Malaysia only. This report needs to be done to find out how far consumer rights in Peninsular Malaysia are protected under the HDA. This is because many abandoned projects have been reported. In addition, most of the housing projects that were completed do not fulfill the specification stated on the Sale and Purchase Agreement in which it has involved many consumers who have been deceived.

## 1.6 Flow of the Study

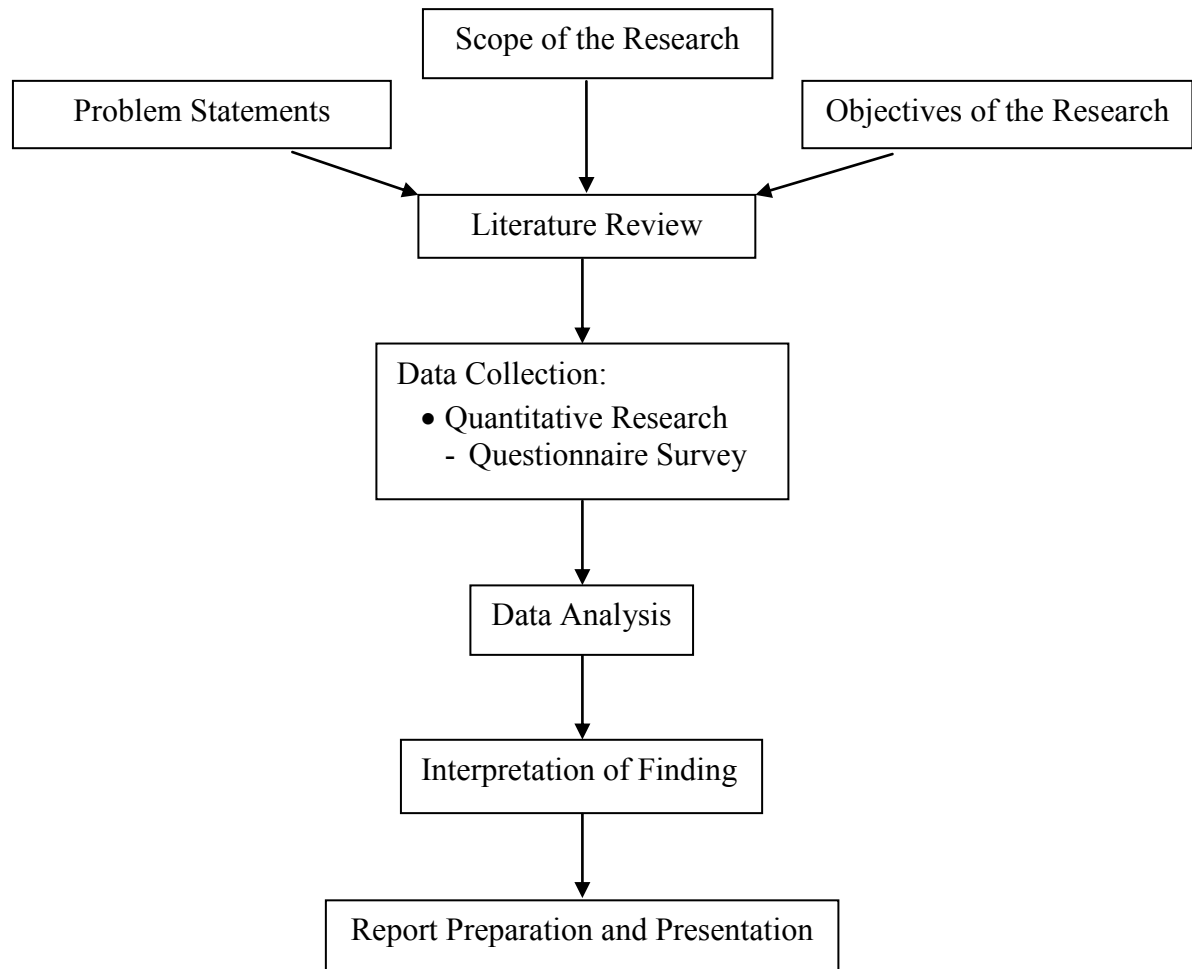


Figure 1.6.1: Flow of the study

## 1.7 Summary

This chapter covered the background of the study. After that, it is followed by the problems faced by home buyers in Peninsular Malaysia as a problem statement in this study. Then, it is followed by questions that are found in this study and objectives to answer these questions. In addition, scope, limitation, and importance of the study also highlighted in this chapter. Lastly, the flow of the study is designed to facilitate the journey of this study.

## CHAPTER 2

### LITERATURE REVIEW

#### 2.0 Introduction

This chapter discusses the matters of literature related to the main beliefs in this study. Leedy and Ormrod (2005) states that the purpose of the literature review is to collect, organize, and assess literature to collect data for further study. In this chapter, the discussions on the definition and important things pertaining to the keywords in this study were made by reference to the reliable information. Based on in-depth study of the available literature sources, key factors that ensure the protection of consumers in housing development industries are legal compliance, Tribunal for home buyers claims, and sustainable construction.

Consumers play an important role as they must communicate or express their dissatisfaction or complaints before remedies can be taken (Donoghue & de Klerk 2009). Azrina et al. (2011) defines consumer as any individuals or households utilizing good and services generated within the economy. Whereby, according to Ministry of Domestic Trade, Co-operatives and Consumerism (2013), a consumer means a person who buys goods and services for his personal use or not domestic or household purpose.

The legal definition for consumer is any person who acquires goods and services for personal, domestic or household use (Section 3(1) of the Consumer Protection Act 1999). The area of consumer protection is relatively new to the most developing countries such as in Malaysia, Indonesia, and African countries (Azrina et al., 2011; Muh Endriyo, 2011 and Donoghue & de Klerk, 2009).

Sometimes the law also does not in the position to best champion the consumers' rights (Sakina et al. 2012). Therefore, consumers must actively participate in advocates the process of upholding their rights against market exploitations. This requires consumer to have knowledge on their rights, for example, regarding complaints' procedures and to take appropriate actions in line with the stipulated regulations. Consumer protection is one of the processes to protect consumers from the attitudes and behaviour of the seller and the manufacturer is not responsible.

Various laws have been enacted in this country to solve the many cases of fraud against consumers. Among the laws that have been adopted in this country are: Sale of Goods Act 1957: has stipulates that, goods sold must: „of satisfactory quality“, „fit for the purpose“ for which they are intended, and „as described“ by the seller; Trades Descriptions Act 1972: sets out that goods must be as described. The description provides part of the contract between the buyer and seller; and Consumer Protection Act 1999: provides liability for damage by defective products.

Legal Dictionary (2013) defines consumer protection as the federal and state statutes governing sales and credit practices involving consumer goods to place consumers, who are average citizens engaging in business deals such as buying goods or borrowing money, on an even par with companies or citizens who regularly engage in business. While Malaysian Communications and Multimedia Commission (2014) defines consumer protection is designed to promote and protect consumer interests.

Referring to the section 16A of HDA, home buyer means a purchaser and includes a person who has subsequently purchased a housing accommodation from the first purchaser of the housing accommodation. Whereas housing developer means any person, body of persons, company, firm or society (by whatever name described), who or which engages in or carries on or undertakes or causes to be undertaken a housing development, whereby “housing development” means to developer or construct or cause to be constructed in any manner whatsoever more than four units of housing accommodation and includes the collection of moneys or the carrying on of any building operations for the purpose of erecting housing accommodation in, on, over or under any land; or the sale of more than four lots of land or building lots with the view of constructing more than four units of housing accommodation (Subs. Act A1289:s 4).

The establishment of a tribunal under Section 16B of HDA is known as Tribunal for Homebuyer Claims. It is to provide homebuyer proceedings for claims against developers who breached the contract (Section 16L of HDA). According to Ministry of Urban Wellbeing, Housing and Local Government, the jurisdiction of Tribunal is limited to a claim that is based on a cause of action arising from a sale and purchase agreement entered into between a homebuyer and a licensed housing developer. Tribunal has jurisdiction to hear cases in Peninsular Malaysia.

## **2.1 Legal Compliances under HDA**

As stated on HDA, an act is to provide for the control and licensing of the business of housing development in Peninsular Malaysia, the protection of the interest of purchasers and for matters connected therewith. [29 August 1969, P.U. (B) 212/1969] [Am. Act A1289:s.2]. So, as a developer, he/she must comply with all applicable laws prescribed under HDA. This is to ensure the project is done legally in the law. Here are laws that have been prescribed under law HDA must be adhered to by a developer.

### **2.1.1 Licensing of Developers (PART II of HDA)**

Section 5(1) states that no housing development shall be engaged in, carried on, undertaken or caused to be undertaken except by a housing developer in possession of a license issued under this act. Means, a housing developer must be in possession of a valid license issued under the Act before he undertakes any housing development. A license is required for each housing development.

Where a housing development is to be undertaken in phases, a license is required for each and every phase of such housing development: see Regulation 3 (5) of the 1989 Regulations. Any misrepresentation of the information furnished by the developer in its application for the license or for a renewal of the license is an offence under the Regulations: see Regulations 3(2) and 4(4) respectively (Haji Salleh Buang, 2001).

### **2.1.2 Duties of developers (PART III of HDA)**

The duties of developers that are related to the consumer protection are as discussed below. The duties are under Section 7 of HDA

(a) If developer makes changes to the document (relating to the construction of a housing project), he must furnish to the Controller written particulars of such alterations within four weeks it is made;

d) Every year appoint an auditor 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) Required to submit progress of ongoing projects twice a year that is not less than January 21 and July 21;

(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 completion and compliance, forthwith inform the Controller of such fact.

Based on these laws, it seeks to ensure the condition and performances of companies' developers are always in control of the authorities. This is to ensure that the company is able to carry out a construction project or not. If the performance of the company is in good condition, it can ensure that projects can be carried out successfully and at the same time, the interests and rights of consumers are protected. However, if the company is in trouble, the authorities can take appropriate action as soon as possible before the consumer becomes a victim of the troubled developer.

### **2.1.3 Open or Maintain of Housing Development Account (PART III of HDA)**

(1) Subject to subsection (9), every licensed housing developer shall open and maintain a Housing Development Account with a bank or finance company for each housing development undertaken by the licensed housing developer.

### **2.1.4 The Standard Sale and Purchase Agreement (SPA)**

Developers are not allowed to collect any payment if the buyer did not sign the SPA. Moreover, developers must also be in accordance with all agreements stipulated and agreed between developer and home buyer. If developer is breaking the agreement has been made, home buyer is entitled to claim their rights in the Tribunal (Section 16B of HDA).