

Legal Issues of Private Lease Scheme in Residential Buildings Under Stratified Properties

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ABSTRACT

A Private Lease Scheme (PLS) was first introduced in 2012 by Iskandar Investment Berhad, a developer that built Meldini in Johor Bahru, Johore, a housing accommodation including stratified property. In a private lease, the landowner will let 'lease' the land to a developer for 30, 60, or 99 years. The landowner grants the rights to the developer to develop and construct the housing accommodation for the public. These rights are based on a Lease Agreement with the landowner remaining as the owner throughout the tenure of the lease. The developer being a lessee, is incapable of passing any ownership (legal or beneficial as recognized under the National Land Code and Strata Titles Act) in the land itself to purchasers. There will be 'no proprietary rights' for the buyers since the landowners will remain the legal owners in perpetuity. Under PLS, the sale and purchase agreement signed by buyers is not for the sale of the property but the sale of a lease over Strata property. The PLS effectively means the purchaser remains a registered Sub-Lessee who derives a contractual (not legal) right from the developer and not as the owner/ registered owner. Only the owner can form a Management Corporations (MC) member, not buyers. As a result, the latter are denied forming MC, which is definitely against Strata Management Act (SMA), 2013 (Act 757). Lack of understanding and misleading of the PLS Scheme by buyers sparked controversy. Ultimately the decided case in December 2020 had sparked further issues when the court granted a declaration sought by the plaintiffs that the sales and purchase agreement is invalid. The court decided that the PLS contravened the Housing Development (Control and Licensing) Act 1966, the Housing Development (Control and Licensing) Regulations 1989, the National Land Code 1965 and Strata Titles Act 1985.

A further examination is needed at this juncture with reference to the other jurisdictions that adopt the Torrens System principles relating to the PLS legal framework that could be used as a benchmark in deriving a more sustainable legal position if PLS were to be adopted in Malaysia. There are three objectives of the research. Firstly, to study the compatibility of the existing legal framework of a lease as a private dealing under the National Land Code (NLC) to the conceptual framework of a sale of property under the Private Lease Scheme (PLS). Secondly, to evaluate the legal implications on the sale of property of the PLS under the HDA, Regulations 1989, Strata titles Act 1985 and the Strata Management Act 2013. Thirdly, examine the legal framework of other jurisdictions that adopt the Torrens System principles relating to the PLS legal framework. The research data are collected from primary and secondary sources. The primary data is collected using indepth interviews, Acts and court decided cases, and secondary data is derived from textbooks, reports and articles from law and other social science journals. The findings of this research are significant in providing evidence on the legality of the PLS Scheme in light of the Torrens System adopted under the NLC, where the ultimatum is to ensure the security of tenure to all the purchasers. The new concept introduced by the PLS Scheme is evaluated to assist the policymaker of the existing law in reviewing the legal implications of the PLS Scheme. Thus, it is hoped that the findings of this research may help address the legal issues of the PLS Scheme. The suggestions

provided in this research may assist the government in providing a secure system of purchasing the sale of a residential property by a developer under the PLS. This research may also add to the body of knowledge and works of literature on the law of stratified property in West Malaysia. This research will also strengthen the legal framework to protect the security of tenure under the National Housing Policy, Ministry of Housing and Local Government and the Ministry of Water, Land and Natural Resources.