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Builders need protection against litigation, says HBA

Sector among hardest hit currently by pandemic

Battling Covid-19

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PETALING JAYA: The National House Buyers' Association (HBA) is urging the Housing and Local Government Ministry to put in place specific legislation to protect the construction sector.

Its technical advisor Ng Yean Shiunn said the construction sector is among the hardest hit in the Covid-19 pandemic and the subsequent movement control order (MCO).

"While Singapore's Law Ministry has introduced a Covid-19 bill to offer temporary relief to businesses covering all sectors of the economy, we have for various reasons not been able to do this.

"In view of this, and because of the linkages of the construction and property sectors to the banking and financial sector, and to the man on the street, the association would like to highlight the urgency and critical need of such a law to at least provide 'a legal shield' to the construction and property sector.

"This, however, does not minimise the importance of the other sectors of the economy. But in view of the current inertia in relation to the introduction of such a Covid-19 bill to shield all sectors, maybe we can take that first step to at least protect the construction and property sector," Ng said.

On April 13, *The Star* quoted former project director for the Klang Valley MRT Serdang-Sungai Buloh line Param Sivalingam who

CONSTRUCTION

said that a total of 17,000 companies would be affected. Param said these are the key drivers of the construction industry and they represent some 850,000 construction workers, based on 2018 statistics from the Construction Industry Development Board (CIDB).

Ng said post-MCO, some foreign workers may decide to return home out of fear, decline in the ringgit and other uncertainties. Secondly, there is also a risk that the supply chain disruption may not be re-established over the short-term among suppliers of key building materials, equipment rental and imported items.

"Third, there is also the need to comply with onerous health and safety requirements from the various ministry," he said.

Ng expects a drop in workers' morale and productivity.

"These factors, set against the reality of the situation in the construction sector, suggest that the construction industry would need more than just a helping hand from the government," he said.

The situation affects the property development industry which is part of the overall construction industry.

"When contractors fail to deliver in time, developers would have to pay late delivery charges or liquidated ascertained damages.

Ng said developers would try to recover their losses from contractors.

"The chain or domino effect is tremendous and far reaching as it affects the banking and lending sector and the man on the street," Ng said.

The effect of having special legislature is to pre-empt "the chain of confrontational litigations". The construction industry mired in a vicious cycle of litigations does not help any-

one," Ng said.

He foresees a spike in the number of problematic projects, winding up of development companies, borrowers facing bankruptcies and a credit crunch among banks and lending institutions.

"Ministries cannot work in silos at a time such as this," Ng said.

Both residential and commercial projects are at stake.

Ng said three established standard form of contracts for construction works deal with the delay caused by the outbreak, the JKR Form 203A, PAM Contract 2006 and FIDIC (1999).

> JKR 203A(2007/2010) is for government and public sector projects. It covers building and engineering works;

> PAM Contract (2006/2018) is for private sector and traditional general contracts. It covers building works only; and

> FIDIC (1999) is mainly for civil engineering works.

However, not all construction related contracts carry a "force majeure" clause.

Contract for minor works, renovation/refurbishment, interior works and the statutory sale & purchase agreement regulated under the Housing Development (Control & Licensing) Regulations, 1989 do not.

"Those operating under contracts without a 'force majeure' clause ought to be accorded the same protection to enable them to tide them over this uncertain and difficult period," Ng said.

He is suggesting a form of mandatory "force majeure" relief. Alternatively, a "reprieve" clause could be introduced, which has the exact legal impact as "force majeure" clause.

It is called a "reprieve" clause to remind all that it is a one-time measure which seeks to provide temporary respite at highly unusual and unprecedented times as today, Ng said.