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# Less 'Pros' and More 'Cons' in En Bloc Strata Sale

According to The National House Buyers Association

IN our article last week, we have discussed how the proposed introduction of en bloc sale is contrary to various legislations currently in place to safeguard one's fundamental right to property which is enshrined in the Federal Constitution.

It was reported that the Department of Director General of Land and Mines (JKPTG) under the Natural Resources and Environment Ministry and a task force formed to study implementation of en bloc sale are currently exploring new ways, including changes in legislation, to facilitate strata property redevelopments for purpose of urban renewals in Malaysia. The initial suggestion is to first have a simple majority of 51% of owners to consent to an en bloc sale for strata redevelopment. Thereafter, the redevelopment plan will be submitted by the public or property developer and registered property valuers could be commissioned to carry out a feasibility study of the redevelopment plan. After that, the owners will proceed to a second voting session, which may require between 70% and 85% majority consent.

It was further reported that based on an online survey, 73.7% of respondents agree that there is a need to redevelop old dilapidated strata buildings for purpose of urban renewals.

This week, we will provide our comment

on various aspects of the proposal concerning en bloc sale based on the information available.

- **The task force set up by JKPTG to study and come up with proposals for effective implementation:**

i. Simple majority of 51 percent owners to consent to an en bloc sale for strata redevelopment. Second voting session (which is optional and not mandatory) of 70 - 85 percent majority consent)

Simple or 2/3 majority to deprive a home owner of his property is contrary to the constitutional right to own property. That is HBA's view. This redevelopment for urban renewal is not what it says it is - it is a mere draconian and unconstitutional law to take the rightful property of home owners, who are living in older strata buildings, against their wishes and sell to avaricious developers to be redeveloped into high end market developments as most of these strata buildings are older developments surrounded by modern high end developments. A good example is the Desa Kudalari apartments which is the main target of this so-called proposed law. Question is whether the Ministry is facilitating the property developers?

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## COVER STORY

### FROM COVER PAGE

The residents of Desa Kudalari are old-timers of the building and it is their home. There is no guarantee that, even if they are compensated for the 'forceful' acquisition of their home, they can afford to purchase a house or home on the same piece of redeveloped land as Desa Kudalari is a prime area. What will happen to them? Will they be given money only or both money and a replacement house in an obscure location in the fringe of the city? Where are they supposed to live in during the period of so-called redevelopment for urban renewal and who is to bear their expenses?

ii. Tribunal for redevelopment of strata schemes for urban renewal?

Why is this necessary as there are already management corporations in existence? As long as the owners continue to contribute and pay adequate maintenance charges to their management corporations, they will have sufficient sinking fund that can be utilised to refurbish and renew their old buildings.

There are plenty of constitutional ways to create jobs without taking the constitutional rights of house owners and further laying waste to taxpayers' money.

iii. Tribunal to hear disputes

There will be numerous disputes as HBA can foresee should this so-called proposed redevelopment law or under the pretext of 'urban renewal' be passed as it is another example of a draconian and arbitrary method to 'suppress' the minority and 'confiscate' the property of the owner through an unconstitutional and invalid law. This tribunal will be sheer waste of taxpayers' money.

### 2. Enabling law to ease the redevelopment for urban renewal of property by strata owners

Currently, we have the Strata Management Act 2013 (SMA) that provides for contributions by owners to the Maintenance Account and Sinking Fund Account in strata schemes so that strata buildings can be properly maintained, refurbished and upgraded without falling into dilapidations.

Home owners of strata schemes should have the freedom to decide on how to go about any redevelopment of their strata schemes without having an unconstitutional law that allows the 'might and greed' of the majority to override the constitutional right of the minority home owners who may be old and infirm. The old and infirm owners who are usually the minority may have to succumb to pressure from the majority owners who decided to trade their respective property for a handsome sum of money. The young owners have the means to easily relocate and adapt to new surroundings but the old owners often have difficulty in doing so.

Does this draconian law envision the right of the minority – should the minority want to be compensated by being given a replacement home on the same lot after redevelopment?

We have to be mindful that housing issues are different from company or corporate arrangements where the majority shareholders in a company can make decisions which do not garner the consent of the minority shareholders provided it must be done for the benefit of the company. The minority shareholders in such cases are still handsomely rewarded.

Not so for home owners who fall into the minority segment should such a draconian



In Singapore, the minority owners are given replacement units on the renewed and redeveloped land itself and not in some far off tertiary location.

law be allowed.

### 3. Survey getting 73.7 percent of respondents.

In the purported survey, JKPTG did not consider HBA's view which includes amongst others the opinions and feedback of the home owners of Desa Kudalari apartments. Question is whether the purported survey was conducted with students, academician and property developers? Had the views of stratified property owners being sought and how many respondents to the survey? Care should be taken to avoid over reliance on the survey result which may not reflect the opinions of the cross-section of the public.

### Comparing Apples & Oranges

HBA has explained numerous times that, in Singapore and Hong Kong, there are only leasehold lands and the availability of such lands for existing buildings and new developments are very limited and scarce on the islands. Not so in Malaysia and especially in Kuala Lumpur, there are plenty of development lands within the greater Kuala Lumpur vicinity, without having to congest inner Kuala Lumpur with many high end expensive condominiums. We have to avoid overbuilding within the city. We have to deter urban migration by building outside the greater Klang Valley.

In the Singapore example, the minority owners are given replacement units on the renewed and redeveloped land itself and not in some far off tertiary location.

In Malaysia, we have both freehold and leasehold lands but what is most glaring is that we have significantly more lands as compared to Singapore.

It is justified to redevelop strata development areas for urban renewal using the current Land Acquisition Act which is in line with Article 13 of the Federal Constitution and Section 340 of the National Land Code to protect the right of home owners rather than apply an irrelevant practice and law such as Singapore when in fact Malaysia (more land space) is vastly different from Singapore (scarcity of land).

The discussion on the viability of en bloc sale in Malaysia using Singapore and Hong Kong as examples has turned a blind eye to the fact that Singapore and Hong Kong are ranked as the world's 3rd and 4th most densely populated countries respectively whilst Malaysia is ranked far behind at 112th based on the projections of the United Nations in 2015. While en bloc sale is arguably a necessary evil in Singapore and Hong Kong due to the pressing need for urban redevelopment, this argument in favour of en bloc sale may not be relevant in the context of Malaysia.

A lot of en bloc sale success stories have been told about how the home owners in Singapore have pocketed a handsome sum of money in exchange of their properties but little has been reported about how the minority owners, who are often old folks who have stayed in the same area for decades, cope with the forced situation when they are forced to give up their properties by yielding to majority's decision. This minority group usually have difficulties in adapting to new surroundings.

### The Takeaway

Enacting new laws to allow en bloc sale

without obtaining consent of all owners will pave ways to create disharmony in stratified developments. In fact, there is no valid justification to support this proposal. HBA's stance is that en bloc sale must be consented by all owners. There are sufficient laws currently in place to push for redevelopment of old dilapidated buildings without sacrificing the interest of owners.

Adopting the laws from other countries blindly without taking into account the social and economy circumstances of our country will only create unnecessary social tension.

*This article was contributed by The National House Buyers Association to the Real Spaces team and edited by Gunaprasath Bupalan.*



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