

**THE REDEVELOPMENT PANDEMONIUM OF
STRATIFIED BUILDING:
A CASE STUDY OF DESA KUDALARI
CONDOMINIUM, KUALA LUMPUR**

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ABSTRACT

This paper seeks to discuss the problems faced by the strata scheme owners when they want to terminate their scheme and redevelop the land by referring to the *Desa Kudalari* Condominium (DKC) in Kuala Lumpur as a case study. One of the major complications in the provision under section 57 of the Strata Titles Act 1985 (Act 318) is to ensure that the unanimous resolution is achieved before any termination can take place. It had caused a significant glitch in the whole redevelopment process since the demand of the minority can supersede the needs of the majority. In this case, it is referring to the unacceptable amount of proceeds demanded by the minority upon the offers put forward by the developer of which was agreed by the majority of the parcel owners. The author also gives a reality check on the redevelopment needs of old and dilapidated strata schemes situated in the heart of major cities which needed to be redeveloped optimally for the benefit of the community and the local economic development. To solve the issue, the writer put forward a proposal to amend the Act 318 to enable the need of the majority to be heard and the minority's concerns be upheld.

Keywords: Stratified building, strata scheme owners, land redevelopment, local economic development

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INTRODUCTION

Way back in the late 19th century, “Where Sprinters Meet Stayers” used to be the catchy tune sang by the bidders and players who were betting their life away for the prestigious Triple Crown Series which was an annual event in one of the earliest horse racing clubs in Malaysia, The Selangor Turf Club. The highly anticipated event attracted crowd from all over the country until it inspired the co-founder of Tan & Tan Development Berhad, Datuk Tan Chin Nam to acquire 29,770 sqm of a freehold land on *Jalan Tun Razak* where The *Desa Kudalari* Condominium (DKC) situated now, with the price of RM7.00 psf in 1971 (The Edge Financial Daily, April 05, 2016). This first premium condominium in Malaysia which was completed in 1984 with 186 units, is now in a dilapidated condition, unsafe and detached from the whole well developed and glitzy cityscape of Kuala Lumpur. Thirty-two years later, the same company approached the Management Corporation (MC) of the DKC for an intention of an en masse sale, the first-ever collective exercise for stratified building in Malaysia (The Edge Financial Daily, April 05, 2016).

Now nestled in between Menara Tan & Tan and *Lembaga Tabung Haji* office tower, the new land value has increased to RM2, 500 psf. The process of acquiring unanimous agreement from every parcel proprietor went on for two years and with only 87% of the proprietors agreed to the offer. With resistance from owners who demanded a much higher price of up to RM6, 000 psf, uncontacted proprietors and increasing processing cost, the project was aborted. Now, plagued with concrete cancer, rusted pipes, dilapidated awnings, corroded rebars and potholes that needed RM12.5 million to repair, majority of the owners are now have vacated the historical residential with 30% of the unit have gone unoccupied, and 55% units are currently rented out. The remaining units are still occupied by the original owner, waiting until the day that the building is condemned to ensure section 57(1) (a) or 57 (1) (c) of Strata Title Act 1985 (Act 318) can formally be implemented.

Even though urban redevelopment and strata renewal are two different notions, yet the motivation is the same; that is to optimize the usage of the land especially in the highly congested area to ensure it will remain economically and socially viable to provide a sustainable and livable city. This foundation was laid by the

United Nations Conference on Housing and Sustainable Urban Development that took place in Quito, Ecuador in 2016, which later was implemented as part of the 3rd National Physical Plan (Final Report Panduan Pelaksanaan Pembaharuan Semula Bandar (Urban Regeneration), PlanMalaysia). Not without confrontation, strata renewal was made into legislation in Australia with their Strata Scheme Development Act 2015, in Singapore with their Land Titles (Strata) Act and in Hong Kong with their Land (Compulsory Sale for Redevelopment) Ordinance.

One of the biggest challenges of the regulation formation in Australia is to deliberate the percentage of consent threshold, as the implementation of Strata Title Act in Australia is the basis of Malaysia's Strata Title Act (STA) 1985, with a concern of unanimous resolution to terminate the subdivided building or land. With only three conditions stated in section 57(1) STA as the enabler for the scheme to be terminated, redevelopment is out of sight. Section 57(1) of STA mentioned that the MC where (a) the building is destroyed; or (b) the parcel proprietors seek to demolish the building or, in the case of a building which has been partially destroyed, the remaining parts of the building; or (c) there is only one proprietor for all the parcels, may by unanimous resolution to take action to terminate the subdivision of the building or land. If the MC fails to get the unanimous resolution, section 57(7)(a)(i) STA allows a court of competent jurisdiction to make an order of termination, but still within the purview of the same section 57(1) STA. Section 57(7) of STA mentioned that a court of competent jurisdiction, if it is satisfied that the justice of the case so requires (a) may on the application of the MC, a parcel proprietor or the registered charge of a parcel make an order – (i) directing the management corporation to take action under subsection (1) notwithstanding the absence of a unanimous resolution; There are no regulations that stated the order and directions for the Court to give effect to the termination of the strata scheme, let alone the strata redevelopment process and procedures.

THE PROBLEMS THAT COMES ALONG WITH THE AGE

Dilapidated building

The proprietors of the DKC can be categorized as T20 income group which the earning of each household is at least RM13, 148, but still, they find it difficult to pay the rising fees and increasing maintenance fees because they know for sure that the investment will not generate any positive return. The building has its heyday but now has become so antique that it does not comply with the current building specifications in terms of material, design and safety. The bricks that framed the building might still be intact, but the foundation, the steel pipe and the rebar material, the wooden awnings and cladding, the cement bonds and grouting have come to the end of their economic lifecycle. When the wind blew a bit harder than usual and damages some small part of the roof, finding a replacement is a struggle because the market did not sell the same type of roof anymore. Instinctively, a house owner always wanted safety and comfort in a place that they share with their whole family so when the push comes to shove, spending their hard-earned money on a new replacement apartment that offers various facilities within the vicinity is the more realistic option.

The venue and the market force

It is more practical to sell the building through en masse sale to enjoy better economies of scale, rather than selling the parcel individually, which will be costly and very timely. As a comparison to the other residential of the same type within the vicinity such as the *Oval* which was completed in 2009 with built-up area (BUA) of 3750 to 7600 sf is priced at RM1, 400 psf, the *Binjai On The Park* which has 2250 to 5748 sft of BUA is priced at RM2700 psf while the *Avare* is valued at RM1200 psf with average unit's BUA is 3800 to 7600 sft. The land in *Menara Kuala Lumpur, Kampung Baru* and *Bukit Bintang* area can be developed with another residential to supply the ever-growing demand of city dwellers who wished to beat the time and be nearer their workplace, or with office towers that support the economy within the like of JKG Tower and Public Mutual Tower, or perhaps with a commercial building development with retails, office space and residential. The possibilities are endless, and the spillover effect will

have benefitted more than one person who refuses to sell their parcel because of the greed for a much higher price.

The en masse sale

DKC has been the prime example of House Buyers Association's (HBA) articles that they wrote in various newspapers (Freemalaysiatoday.com, 19th April 2019) claiming that the owners' refusal to sell is because of the emotional attachment of the owners to their home. Based on the Town hall Session related to the en masse sale of DKC in October 22nd 2016, CBRE – WTW, one of the leading real estate services firm in Malaysia presented that, when the feedback regarding the proposal of en masse sale was conducted, only 65.59% of the residents responded, which was 122 out of 186 proprietors agreed to the proposal. However, this data should not be the sole reference for an argument because referring to the minutes of the 12th Annual General Meeting (AGM) held on August 19th 2017; the DKC MC has confronted the 33% of the non-respondents which resulted to the agreement of 10% of them. Apart from that, the use of simple ratios does not accurately reflect the number of owners who want to sell due to the mix of apartment sizes and corresponding share unit.

The hope of the proprietors

DKC, *Taman Keramat Permai* Flat has seen major wear and tear, which is inevitable given by this country's weather condition. Nowadays, as more original residents vacated the DKC, this place has started to attract different kind of crowd who are fascinated by the cheap rent offered in the prime area of Kuala Lumpur. According to the DKC MC, the reasons of those who chose to sell out their property through en masse sale are because some of the owners have gone jobless and no longer afford to stay there, some of the old residents need the money to pay for medical expenses for self or dependents, some family need it for educational purposes, thus their plea should also be given equal chances to be heard as those minorities who refuse to sell. The building has clearly went past its prime, it is evidently more realistic to sell it out and redevelop rather than forking out money for the up keeping job that will only be snowballing in the future.

SUGGESTIONS

It is better to have a regulation that gives an alternative solution to the owner of the strata parcel rather than rigidly controlling their decision until it somehow prevented them from enjoying their rights to have a better living condition. The amendment proposal of Act 318 must not be without appropriate procedures to safeguards the vulnerable proprietors who are always at risk to be manipulated with unfair agreements and false promises. The government involvement in the whole strata renewal process is also crucial in ensuring that the whole process is according to the decree of the act.

Section 57 of Act 318 can be amended to ensure that majority resolution achieved in the Annual General Meeting or Extraordinary General Meeting of the scheme can be taken into consideration for the termination of subdivision of the building or land. However, this resolution is not without the completion of the (proposed) Schedule 8 which will include the procedures that must be adhered to by every party that involved in the redevelopment process, such as the content of the strata redevelopment plan which consists of the general overview of the redevelopment, the sale price and the amount of proceeds to the parcel proprietors, the basis of consideration for the Court for hearing of objections and the effects of the termination to the registered strata titles as well as the report on social impact mitigation, among others. This majority resolution decision, along with the completion of Schedule 8, will be forwarded to the land administrator of whom will prepare complete paperwork to be tabled to the State Authority. The state authority whose power to approve the application of the subdivided building or land as stated in Act 318 as well as the Federal Constitution for matters related to land administration, should also be given the power to consider the application for the termination of the said building or land for strata renewal. The dissenting owners will then be given platforms for their voice to be heard in the Court which has the power to approve, amend or reject the whole strata renewal plan, with reference to the order and directions stated in Act 318.

CONCLUSION

As the city getting older, it has become more critical to search for viable solutions as to effectively, efficiently and inclusively redevelop older areas of privately owned multi-unit strata-titled housing to accommodate population growth without exacerbating social inequalities and collateral, social disruption. The decision of renewal must come from a collective decision from the majority of the parcel proprietors with options to state any grievances will be provided through intervention from the State Government and the Court. It will empower the people to implement their rights on their property while keep being protected with proper guidelines and procedures provided for in the regulation. *Desa Kudalari Condominium* is only one among other schemes that are in a dire need to be redeveloped, such as *Mahsuri Five Points Flats*, *Bandar Bayan Baru*, *Penang* and *PKNS Flats Jalan Tun Razak, Kampong Bharu*, Kuala Lumpur to name a few. However, until the act is amended, they will continue living in limbo between the good-old-memory and the imagination of a sustainable city and a livable future.

DISCLAIMER

This article is solely the view of the writer and does not represent the stand or policy of the organization associated with the writer.

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