



HBA: Partial CCC not a 'legislative anomaly'

THE Dec 6, 2019 article "Partial CCC Issuance a legislative anomaly" seems to suggest that there appears to be a "legislative contradiction" or "anomaly" when the Strata Title Act (STA) 1985 (Act 318) and the Uniform Building By-Law (UBBL) 1984 (amendment 2007) are read together with the Housing Development (Control & Licensing) Act (HDA) 1966 (Act 118).

The authors elaborated that where STA endorses phase development in the form of provisional block and the UBBL facilitate the fitness worthiness for such partial occupation in the form of Partial Certificate of Completion and Compliance (Partial CCC) or Form F1.

However, there is no such corresponding/complementing provisions under HDA to accommodate such practice. On the contrary, the HDA forbids use of Partial CCC in delivery of vacant possession (VP) to buyers.

The laws

To construe the difference in intention and emphasis of these legislations is somewhat misplaced.

These so called "contradiction/anomaly" can easily be reconciled and addressed through the legal maxim of *Generalia Specialibus Non Derogant*, which means for the purposes of interpretation of two statutes in apparent conflict/contradiction, the provisions of a general statute must yield to those of a special one.

• Strata Title Act 1985 (Act 318)

Act 318 is a piece of primary legislation, which governs the subdivision of buildings into parcels with the issue of strata titles. It covers housing and non-housing buildings such as commercial in the form of office space and retail outlets.

• Uniform Building By-Law (UBBL) 1984 (amendment 2007)

UBBL is a secondary legislation, which among others regulates building codes for buildings in general, it covers housing and non-housing buildings such as commercial, institutional, public and other private buildings.

• Partial Certificate of Completion and Compliance (Partial CCC)

The rationale of Partial CCC is to allow a partially completed part a building to be occupied provided always it is self functioning and sustaining with all the essential services and

amenities serving the partially completed part duly completed. An example would be a podium for a shopping mall with office tower block.

• Housing Development (Control & Licensing) Act 1966 (Act 118)

Whereas Act 118 is a Statute 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. In another word, HDA is a specialised legislation dealing with housing issues under its strict provisions.

The intention and emphasis of Act 118 is best illustrated by the Federal Court on Nov 26, 2019, in its judgment in the landmark case known as *Ang Ming Lee & Ors v Menteri Kesejahteraan Bandar & Pengawal Perumahan*, which ruled that the housing controller has no power to waive or modify provisions of the contracts of sale as prescribed by regulations 11(1) and (2) of the Housing Development (Control and Licensing) Regulations, 1989 (1989 Regulations).

Chief Justice Tan Sri Tengku Maimun Tuan Mat had emphasised in no uncertain terms in the judgment that Act 118 is a 'social legislation' intended to protect the house buyers. The interests of the purchasers shall be the paramount consideration against the developer.

Henceforth, the non-provision/application of Partial CCC can hardly be construed as "contradiction/anomaly" at odds with the other two pieces of legislations, in fact it was the intention of the Act.

This can be inferred from the fact that Partial CCC was explicitly precluded from as one of the quintessential VP conditions:

- i) Section 3 of Act 118;
- ii) Clause 1 (b) Schedule G; and
- iii) Clause 1 (c) Schedule H, Clause 1(b) Schedule 1 and Clause 1(c) Schedule j

The exclusion is a testament that the issue of Partial CCC had indeed been deliberated, considered and left out in good measure.

Partially completed scheme due to "phased development" is known to have created a litany of problems for the purchasers/owners/occupants *inter-alia*,

- i) The incompleteness of the overall neighbourhood for the occupants of the earlier phases in the event where the developer absconded, abandoned the project half way or

unable to continue with the subsequent phases due to financial burden or winding up.

An example would be a podium for a shopping mall with residential tower block(s) sitting on top of it. What would happen if the developer abandons the construction of the podium block after the issuance of Partial CCC to the purchaser of the residential tower block(s) due to low take-up rate of the retail outlets?

The purchasers will have to put up with the partially completed structure for neighbourhood and worst still, if they have to walk through such partially completed structure if both the podium and tower block(s) happen to share a common access. The abandoned structure of the podium block will be an eyesore to the neighbourhood and such abandonment will also result in the reduction of the property value.

ii) Even if the podium phase is not abandoned, the subsequent ongoing construction activities where cordoning/partitioning is required between phased development will create a host of potential security threats, safety and health hazards caused by sounds, smog, noise and dust pollution to the purchasers of the earlier phase as well as to the neighbourhood alike.

Henceforth, the drafters of the legislation in their wisdom did not see it (Partial CCC) fit to be included along with CCC in the best interests of the house buyers notwithstanding it was provided under the UBBL, a decision, which is in line with

the legal maxim of *Generalia Specialibus Non Derogant* where the general legislations of STA and UBBL must yield to the specialised one, to wit, the HDA in respect of mode of VP. Thus, the issue of "contradiction/anomaly" does not arise at all.

In reality

Compare to:

i) The amount of abandoned and "stuck" projects, which is still languishing at over staggering 360 cases as at 2019 with no sign of abating anytime soon;

ii) The amount of errant developers blacklisted by the Housing Ministry, perusing through the list of blacklisted developer on the website of the National Housing Department, will invariably prompt one to ask "who is not on the list of errant developer?" rather than "who is on the list?"; and

iii) The rampant nature of shoddy workmanship experienced by the house buyers and others.

The exclusion of Partial CCC from the HDA represents only a small step in pre-empting and mitigating the potential harms that could be inflicted on to the unwary house buyers, who have suffered in silence for perhaps far too long.

This article was contributed by the National House Buyers Association (HBA).