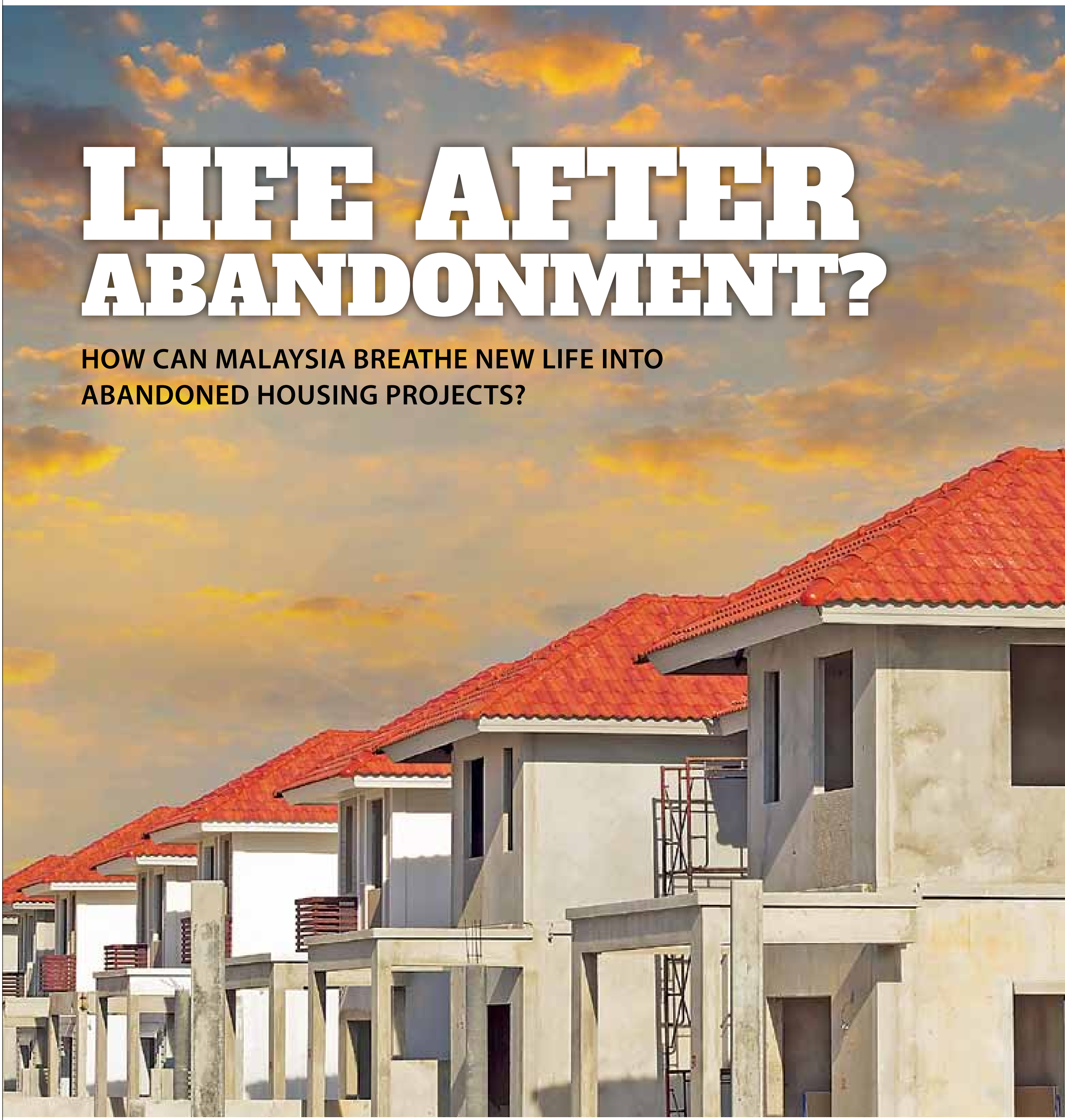
BY MAJELLA GOMES

LIFE AFTER ABANDONMENT?

HOW CAN MALAYSIA BREATHE NEW LIFE INTO ABANDONED HOUSING PROJECTS?



(L - R) Andrew Heng (moderator), Datuk Ng Seing Liong, Kumar Kanagasingam, Yip Kok Leong and Raveendra Kumar Nathan

IT'S quite common to drive by abandoned housing estates in Malaysia. But while Malaysia's housing industry might seem to be plagued by these derelict shells, "the situation is really not as serious as perceived," assured Datuk Ng Seing Liong, Senior Partner, S L Ng & Associates, and two-term President of the National Real Estate & Housing Developers Association (REHDA).

"The Malaysian situation is actually quite a success story. The majority of the 4,769,328 units were developed under the sell-then-build system, and 98.76% of units were successfully delivered in the past three decades, from 1984 to the second quarter of 2014. That's a failure rate of only 1.24% over 30 years," said Datuk Ng.

However, it cannot be denied that this problem was partly mitigated through the initiation of certain mechanisms over the years to mitigate the adverse impacts of abandoned projects. Indeed, one key measure was the establishment of a Special Task Force to address abandoned housing projects in 2009, spearheaded by the then-Chief Secretary to the Government, Tan Sri Mohd Sidek.

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RECOGNISING AND DEALING WITH PROBLEMS

Industry experts at the recent MIA Insolvency Conference 2014 zeroed in on the implications of the Housing Development Act; legal issues affecting abandoned housing projects; successful revival of abandoned projects; and recommended future actions, during the panel session on "Giving Life to Abandoned Housing Projects – What can be done?".

According to the panellists, deposits required of developers have been increased, payment schedules have been amended, and a home completion guarantee scheme has been implemented by the housing development authorities.

"Form 7F is now issued four times a year instead of just twice," Datuk Ng pointed out. "And the authorities have been helping "white knights" negotiate with banks. Legal issues pertaining to the revival of abandoned projects are being ironed out. Purchasers are being helped to sort out financing issues, including loan restructuring and EPF withdrawals. There have also been amendments to the Housing Development (Control and Licensing) Act 1966 that has criminalised certain offences; jails and fines now apply. The definition of 'housing developer' has been expanded to include the liquidators of housing developers in liquidation as well."

One of the implications of the amendment, added Kumar Kanagasingam, Partner, Lee Hishammuddin Allen & Gledhill, is that liquidators of housing developers in liquidation are deemed to come within the definition of housing developers as a result of the amendment, and consequently are subject to the same stipulations, rules and provisions of the Act that developers are currently subject to.

"Before the amendment, liquidators of housing developers in liquidation need not apply for housing developer's licences of their own; now they must be individually licensed," he explained. "The amendment also makes it easier for purchasers to terminate Sale & Purchase (S&P) agreements if the project has been abandoned for more than six months continuously. The liquidator of the housing developer in liquidation will then have to refund all monies paid by the purchaser in connection with the S&P. But liquidators may not have that kind of money, so how can this be resolved? There are conflicts arising from this amendment. In fact, housing developers and liquidators of housing developers in liquidation cannot now abandon a housing project as it is an offense under the Act and punishable by fine and/or jail sentence.

KEEP CALM, AND CARRY ON BUILDING

However, Raveendra Kumar Nathan, Managing Principal, Rimbun Capital pointed out that the number of liquidators involved in housing projects was small. "There are only about ten at present," he said. "Section 3 of the HDA that includes liquidators personally as a developer and individually (be) licensed is not workable. As the licence from the company could not be transferred, the liquidator will have to apply for a new licence, submit a fresh development order to the authorities, sign a new Sale and Purchase agreement, open a new Housing Development Account etc.; that is practically impossible."

Commenting on the build-then-sell concept, Yip Kok Leong, Senior Vice-President – Group Loan Rehab, AmBank (M) Bhd felt that this concept has not been really tested in the local market as at to-date. Some developers have taken the initiative to implement the build-then-sell concept, but the limited numbers cannot be taken as a "tried and (tested) success story". Some of these developers / projects still have teething problems.

"The concept was originally adopted to mitigate the possibility of abandoned projects but it is not foolproof," he said. "We have to ask why the project was abandoned to begin with. As long as the project is ongoing, the development project is expected to generate money so it makes no financial sense for the developer to abandon the project.

Abandonment usually happens when the developer runs out of money and/or cash flow. Development is an expensive proposition, so the build-then-sell concept is not practical, nor will it stop abandonment."

But the concept seems to work in other countries – Australia in particular, noted Datuk Ng. "It works there but not here because Australia is a mature market," he continued. "It has a smaller population but more houses than Malaysia." He explained further that in Australia, developers tended to buy lots, then subdivide them and put in infrastructure. Individual purchasers then buy the land with costs already factored in. "This of course refers to undeveloped areas," he clarified. "City living is different. The system in Australia is tough; getting buyers for 80% of your project is not easy."

Agreeing with Yip on the imposition of a fee for the administration of all matters pertaining to the restarting of abandoned projects, Kanagasingam added that the recently-introduced Competition Act would be able to regulate a fee scale of this nature. "The Act is intended to stop profiteering," he said. "So developers cannot impose any fee they choose; it will be an offence. The authorities should set the fee structure for the industry."

SELL, BUILD, ABANDON, REVIVE

Acknowledging that reviving abandoned projects is never an easy task, Nathan said that three major aspects needed to be considered: technical, legal and financial/commercial requirements. "There are often unanticipated complications," he said. "Sometimes, the land proprietor is not the actual developer. There are currently no guidelines on how to revive abandoned projects as each revival has to be approached differently. Many elements need to come together before abandoned projects can get up and running again. But at present, there are many regulations to follow and awareness is low amongst financiers and authorities on how projects are revived."

Speaking from the finance perspective, Yip remarked that the public perception was that, "No matter what happens, the bank always makes money!" But this was not always the case.

"Nobody wants to abandon the project – including the developer," he said. "The bank's view is that if the liquidator can produce a commercially and financially-viable programme, it will certainly be considered. Moreover, the amount of funding does not have to be in dollars and cents; it can take the form of indirect funding as well."

Opining that investments in property were still the most desirable as these rarely depreciate, Datuk Ng felt that the local industry will continue to develop, regardless of the challenges it faced. The number of abandoned housing projects has decreased in the last few years, he said.

Kanagasingam generally agreed, stating however that certain exemptions were required in order to make existing laws more effective.

Yip called for more stakeholder engagement, considering that abandoned housing projects were an issue of great concern, in general. "Everybody's views should be heard on this matter," he said. "There should be ways of finding compromise and better solutions."

Nathan, on the other hand, was of the opinion that there were enough laws and guidelines at present, but enforcement was lacking. "There is a whole range of stakeholders involved," he agreed with Yip. "For instance, lawyers should not act for developers and purchasers simultaneously; financiers should physically inspect development progress before releasing progress payments and local authorities shouldn't approve development orders if (the) premium on land conversion is not paid. Sometimes they lack knowledge and personnel trained enough for their respective roles. If every stakeholder plays their part, there won't be abandonment." ■