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REGULATORY GAPS AND GOVERNANCE CHALLENGES IN WAQF HOUSING: STRENGTHENING LEGAL AND INSTITUTIONAL PROTECTION UNDER MALAYSIA'S HOUSING DEVELOPMENT FRAMEWORK

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Abstract

Waqf housing developments offer an alternative mechanism for affordable housing delivery in Malaysia by utilising inalienable waqf land through long-term lease arrangements. However, these schemes do not align neatly with the purchaser-developer model under the Housing Development (Control and Licensing) Act 1966 (HDA), creating uncertainty over whether waqf lessees are entitled to statutory protection and access to the Tribunal for Homebuyer Claims. Using a doctrinal approach, this study analyses statutory provisions, case law, and administrative guidelines to assess the legal standing of waqf lessees, the scope of the Tribunal's jurisdiction, and the adequacy of available remedies. The findings reveal that although waqf lessees may fall within the definition of purchasers under the HDA, the Act's buyer-centric procedures and remedies fail to address the fiduciary and religious dimensions of waqf governance. The paper proposes governance-oriented reforms, including clearer statutory recognition of waqf lease arrangements and stronger coordination between housing regulators and State Islamic Religious Councils to ensure equitable and coherent protection within Malaysia's housing system.

Keywords: Homebuyer protection, Waqf housing, housing governance

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INTRODUCTION

Access to affordable and secure housing remains a persistent challenge in Malaysia despite long-standing government intervention through regulatory reforms and public housing programmes (Daud et al., 2022). The introduction of waqf-based housing has been recognised around the world as an innovative mechanism for social housing delivery, utilising inalienable waqf land to provide long-term residential leases for lower- and middle-income groups (Cania & Juliati, 2024). Such initiatives resonate with the Malaysia MADANI policy's emphasis on inclusivity and social justice, as well as the Sustainable Development Goal (SDG) 11, which calls for sustainable and equitable urban communities.

Nevertheless, integrating waqf land into the mainstream housing market presents complex governance and regulatory challenges. Malaysia's housing system operates within a multi-level governance structure involving federal, state, and local authorities. The Ministry of Local Government Development (KPKT) administers the HDA and the Tribunal for Homebuyer Claims, while land and planning matters fall under the jurisdiction of the respective State Authorities. The additional role of the State Islamic Religious Councils (SIRCs) as trustees of waqf assets introduces another institutional layer. This overlapping jurisdiction often results in regulatory fragmentation, particularly when waqf housing schemes do not fit neatly within the purchaser-developer model envisaged under the HDA.

Within this complex regulatory landscape arises a key question; what extent are the HDA and the Tribunal for Homebuyer Claims adequate in protecting waqf housing lessees within Malaysia's housing governance framework? To address this question, this paper adopts a doctrinal approach to examine the adequacy of Malaysia's housing development framework in protecting waqf housing lessees. It analyses statutory provisions, case law, and administrative guidelines to assess whether waqf lessees fall within the definition of "purchasers" under the HDA and whether the Tribunal for Homebuyer Claims offers suitable remedies. Framing the analysis within Malaysia's housing governance structure, the paper identifies coordination gaps between federal regulators and SIRCs and proposes governance-oriented legal reforms to enhance statutory recognition of waqf leases and strengthen institutional coordination.

LITERATURE REVIEW

Waqf Property and Housing Development in Malaysia

The waqf institution in Malaysia has long been recognised as a vital instrument for socio-economic development. Classical Islamic jurisprudence emphasises the inalienability, perpetuity, and irrevocability of waqf property, positioning it as a unique charitable mechanism distinct from zakat and hibah (Mamat et al., 2025).

In contemporary practice, waqf is increasingly mobilised as a means of addressing pressing social issues such as poverty, housing affordability, and equitable access to property ownership.

Siti Nadiah et. al. examined waqf real estate development as a social welfare alternative, using Penang as a case study. They find that the Penang Islamic Religious Council has successfully implemented housing projects based on the *ijarah* concept, enabling low- and middle-income groups to access safe and comfortable homes. Their study demonstrates how waqf property, if managed effectively, can address urban housing challenges while adhering to Shariah principles (Ali et al., 2016).

However, the inalienable character of waqf land means that ownership cannot be transferred, sold, or mortgaged. To unlock its socio-economic potential, particularly for housing, waqf land is developed through long-term lease mechanisms (*ijarah*). Under this structure, the SIRC retains legal ownership as trustee, developers construct and market residential units, and occupiers enter into lease agreements that grant rights of use for a fixed term, often 30 to 99 years. This framework ensures the perpetuity of waqf while simultaneously allowing the land to serve pressing community needs (Ali et al., 2016; Hydzulkifli et al., 2013).

Waqf housing therefore provides a viable path to secure housing for low- and middle-income while transforming idle Waqf lands into productive residential assets (Hydzulkifli et al., 2013). These arrangements also generate recurring income for waqf institutions, ensuring the sustainability of waqf property management (Abdullah et al., 2020). Scholars have proposed various innovations to expand to expand this potential. The Waqf Cooperative Housing Model (WCHM) combines cooperative development with waqf-based financing instruments such as cash waqf and waqf sukuk, to overcome funding constraints (Khan et al., 2019). Similarly, collective waqf models integrate governance, financing, and social impact dimensions to improve affordability for disadvantaged groups (Ating & Kamal, 2020).

Taken together, existing studies confirm that lease mechanisms on waqf land are a practical and socially beneficial method of providing housing while preserving the inalienability of waqf. Nevertheless, most of this literature concentrates on development models, financial structures, and institutional governance within Islamic administration. From a broader housing governance perspective, these studies have not addressed whether such lease arrangements provide occupiers with the same legal and regulatory safeguards as conventional homebuyers. Therefore, this unexamined dimension, i.e the adequacy of legal protection for waqf housing lessors under Malaysia's statutory housing framework forms the basis of the present analysis.

Legal Protection of Homebuyers under the HDA and the Tribunal for Homebuyers' Claims

The HDA was enacted to curb abuses by housing developers and to protect purchasers. The statute prescribes standard-form contracts (Schedules G–J), which are mandatory for both developers and purchasers and are non-negotiable. These contracts stipulate fixed delivery periods, either 24 months for landed property or 36 months for subdivided buildings, where late deliveries would entitle the purchasers to liquidated ascertained damages (LAD) at 10% per annum calculated daily (Amin et al., 2014). Under these prescribed contracts, the purchasers would also benefit from a 24-month defect liability period, during which developers must repair defects at their cost (Hassan et al., 2021). Courts have consistently upheld these statutory rights, treating them as mandatory consumer protections.

The Tribunal for Homebuyers' Claims, introduced through an amendment in the HDA in 2002, reinforces these protections by offering purchasers a fast, low-cost dispute resolution mechanism. Within its first nine years, over 30,000 claims were filed, with 90% concerning LAD for late delivery (Amin et al., 2014). The Tribunal's jurisdiction is, however, carefully prescribed under the HDA. Azlinor Suffian observes that the Tribunal only hears disputes arising from the abovementioned statutory contracts entered into between homebuyers and licensed developers, and its awards are capped at RM50,000 (Sufian, 2011). Due to these limitations, contractors and consultants cannot be brought before the Tribunal, leaving civil courts as the only recourse for the purchasers (Sufian, 2012).

While consumer-friendly in design, the Tribunal faces procedural and enforcement weaknesses. Legal representation is generally barred, with lawyers allowed only in complex cases and upon agreement by both parties. Representative claims are disallowed, requiring multiple buyers in the same project to file individually, creating inefficiency (Sufian, 2011). Remedies are confined to monetary losses flowing directly from SPA breaches; claims for distress, personal injury, or broader tortious remedies fall outside its jurisdiction. Enforcement is also problematic: although Tribunal awards are deemed equivalent to Magistrates' Court judgments, execution must be pursued in civil courts, which undermines efficiency (Sufian, 2011).

The monetary cap of RM50,000 has been criticised as inadequate for many disputes, particularly in urban areas where property values are high. By contrast, Sarawak's tribunal permits claims up to RM80,000 with ministerial approval (Sufian, 2011). These disparities suggest that Peninsular Malaysia's framework remains more restrictive.

(Abu Bakar et al., 2022) demonstrate that attempts to substitute the mandatory SPA with long-term lease arrangements are considered unlawful deviations under the HDA regulations, which require strict adherence to the prescribed format. Their analysis of private lease schemes highlights how such mechanisms blur the distinction between ownership and tenancy, exposing buyers to legal uncertainty and revealing the statutory rigidity of the HDA. This doctrinal limitation has governance implications: innovative housing models, including waqf-based leases, cannot access statutory protections despite serving similar socio-economic purposes.

The literature therefore presents a clear contrast. On the one hand, the HDA and the Tribunal provide robust safeguards for purchasers under statutory agreements, including fixed delivery timelines, LAD, and accessible dispute resolution mechanisms. On the other, these protections have been examined almost exclusively in the context of conventional purchaser-developer arrangements, with little attention to lease-based schemes. Waqf housing, which operates through long term leases in a tripartite arrangement involving the SIRC and developers, falls outside this framework. Broader housing studies note that Malaysia's affordable-housing governance as fragmented and market-driven, with weak integration between regulatory instruments and social objectives (Daud et al., 2022). This fragmentation extends to waqf housing, where coordination between federal housing regulators and state religious authorities remains limited.

RESEARCH METHODOLOGY

This study adopts a doctrinal legal research methodology, which is primarily qualitative and interpretive in nature. Doctrinal research involves the systematic analysis of legal rules, principles, and concepts, focusing on statutes, case law, and authoritative commentaries to explain, systematise, and evaluate the state of the law (Hutchinson, 2016).

The primary sources examined include the Housing Development (Control and Licensing) Act 1966 (HDA), the Housing Developers (Control and Licensing) Regulations 1989, which prescribe the standard form sale and purchase agreements (Schedules G–J), and the Housing Developers (Tribunal for Homebuyers' Claims) Regulations 2002, which establish the Tribunal and govern its procedures. Together, the provisions govern the purchaser-developer relationship through prescribed sale and purchase agreements (Schedules G–J) found under and establish the jurisdiction, procedures, and powers of the Tribunal for Homebuyers' Claims. Case law is analysed to examine how courts have interpreted the definition of 'purchaser,' the enforceability of statutory sale and purchase agreements, and the legality of alternative arrangements such as lease-based schemes.

In addition to statutory and judicial sources, the study engages with secondary sources, particularly academic journal articles on waqf administration, housing law and housing governance in Malaysia. These materials are used to contextualise the governance of waqf land within the broader institutional framework of housing development, to explain the contractual structure of lease agreements, and to highlight gaps existing in both legal protection and administrative coordination affecting waqf lessees.

By comparing the contractual structure of waqf leases with the statutory purchaser-developer model under the HDA, this analysis identifies doctrinal gaps in legal protection and explores how these gaps reflect broader governance challenges in ensuring coherent oversight of waqf-based housing schemes.

ANALYSIS AND DISCUSSION

Jurisdiction of the Tribunal in Relation to Waqf Lessees

Under Section 16M(1) of the HDA, the Tribunal for Homebuyer Claims has jurisdiction to determine claims where the total amount sought does not exceed RM 50,000 in respect of each claim. Under section 16L, proceedings before the Tribunal may be commenced by a *homebuyer* through the filing of a prescribed claim form. As Azlinor Suffian observes, locus standi before the Tribunal is restricted exclusively to homebuyers; neither consumer associations nor non-governmental organisations may act on their behalf. (Sufian, 2011).

The statutory definition of *homebuyer* is provided in section 16A, which refers back to the meaning of *purchaser*. Section 3 of the HDA defines a *purchaser* broadly as “any person who purchases housing accommodation” or “any person who has any dealing with a licensed housing developer in respect of the acquisition of housing accommodation.” On this basis, the scope of protection under the Act is not limited to outright buyers but may extend to parties who acquire housing accommodation through other dealings, including long-term leases with licensed developers. Accordingly, section 3 is sufficiently clear to accommodate lessees within the definition of purchaser, and by extension, homebuyer under section 16A.

The real issue, therefore, does not lie in the statutory interpretation but in the adequacy of the Tribunal's jurisdiction to address the distinctive features of waqf leases. Unlike ordinary lease arrangements, waqf properties are held in perpetuity for religious and charitable purposes, with the SIRC serving as sole trustees. Lease agreements involving waqf property thus often involve a tripartite structure between the lessee, the developer, and the SIRC. This triangular relationship raises practical and legal questions about how effectively the Tribunal can extend its protective jurisdiction to waqf lessees, especially where the fiduciary obligations of the SIRC intersect with the statutory rights of lessees under the HDA (Kader et al., 2018).

Although no case law has directly addressed the position of waqf lessees before the Tribunal, inferences may be drawn from the treatment of private lease schemes. In *Loh Tina & Ors v Kemuning Setia Sdn Bhd & Ors and Another Appeal* [2020] MLJU 635, the Court of Appeal considered a housing development on freehold subdivided land in Penang, where the developer had unilaterally modified the prescribed Schedule G Sale and Purchase Agreement into a “Build and Lease Agreement.” Purchasers were granted 99-year leases with an option of renewal, despite the Controller of Housing having rejected approval for such modifications. The appellants insisted on their standing as purchasers under the HDA, seeking declarations that the agreements should conform to Schedule G and that the freehold titles be transferred. It should be noted that the Court consistently referred to the appellants as purchasers, notwithstanding the lease form of the transaction.

The Court ultimately held that although the agreements were framed as long-term leases, the appellants remained purchasers under the HDA and were entitled to all statutory protections, including those conferred by Schedule G. In doing so, it reaffirmed the Federal Court’s position in *Ang Ming Lee & Ors v Menteri Kesejahteraan Bandar, Perumahan dan Kerajaan Tempatan & Anor* [2020] 1 MLJ 281 that the HDA is a piece of social legislation, and that the paramount consideration under the Act is the protection of house buyers. Developers cannot, therefore, circumvent statutory obligations by disguising sales as leases.

From *Loh Tina*, it may be inferred that parties who enter into lease arrangements involving waqf properties with developers may still be regarded as purchasers for the purposes of the HDA. By extension, they fall within the definition of homebuyer under section 16A and thus enjoy standing before the Tribunal. The challenge that remains is whether the Tribunal’s mechanisms are adequate to safeguard waqf lessees, given the unique role of SIRC as trustees and the religious character of waqf property.

Cause of Action and Waqf Lease Agreements

Section 16N(2) of the HDA further limits the Tribunal’s jurisdiction to claims arising from a cause of action based on the sale and purchase agreement entered into between a homebuyer and a housing developer. This raises a difficulty in cases where purchasers had entered into agreements that were not in the prescribed statutory form, or where the agreements had been varied without proper approval. The question then is whether such purchasers can still rely on the protection of the HDA and bring their claims before the Tribunal.

The courts have long taken the view that statutory protection cannot be ousted by contractual variations. In *SEA Housing Corporation Sdn Bhd v Lee Poh Choo* [1982] 2 MLJ 31, the Federal Court held that clauses in a sale and purchase

agreement inconsistent with the prescribed Schedule G were void, and that the statutory clauses must prevail. This principle ensures that developers cannot evade their obligations by altering the statutory form.

Later, in *ABT Construction Sdn Bhd & Anor v Tribunal Tuntutan Pembeli Rumah & Ors* [2013] 9 MLJ 193, Varghese George J affirmed that compliance with the statutory form is mandatory but recognised that an exception arises where approval for variation is properly obtained. At that time, such approval was thought to be within the Controller's discretion. However, the Federal Court in *Ang Ming Lee & Ors v Menteri Kesejahteraan Bandar, Perumahan dan Kerajaan Tempatan & Anor* [2020] 1 MLJ 281 clarified that only the Minister, and not the Controller, has the power to approve variations to the prescribed contracts.

Building on these foundations, the Court of Appeal in *Loh Tina* considered a case where a developer had replaced the Schedule G Sale and Purchase Agreement with a "Build and Lease Agreement," despite the Controller having refused approval. The Court held that although the agreements were framed as long-term leases, the purchasers remained purchasers under the HDA and were entitled to the statutory protections. Importantly, the Court emphasised that only the unauthorised variations were void, while the rest of the contract continued to be enforceable in line with Schedule G.

The same approach was followed in cases such as *Wong Hang Foh & Ors v Tropika Istimewa Development Sdn Bhd* (Kuala Lumpur High Court Civil Suit No: WA-22NCVC-120-03/2018) and *Ang Bee Chin & 38 Ors v Kemuning Setia Sdn Bhd & Anor and Other Suits* [2025] MLJU 908. In both cases, the courts confirmed that developers who opted out of the prescribed agreements without ministerial approval had committed an offence under the Act. Nevertheless, the courts upheld the contractual relationship between the parties and required the agreements to be performed as if they were in the prescribed form.

Taken together, these cases establish a coherent line of authority: (i) Schedule G (or the relevant prescribed schedule) is mandatory and prevails over inconsistent contractual terms (*SEA Housing*); (ii) variations are permissible only with ministerial approval (*Ang Ming Lee*); and (iii) where a non-prescribed agreement is used without such approval, the agreement remains enforceable, but only to the extent that it conforms with the statutory contract (*Loh Tina*, *Wong Hang Foh*, *Ang Bee Chin*).

Accordingly, lessees who enter into lease agreements, whether authorised or otherwise, can still be protected under the HDA and bring claims before the Tribunal. The enforceability of such agreements, however, depends on whether the requisite ministerial approval has been obtained and, in its absence, the degree to which the agreement deviates from the statutory form.

The Nature of Waqf Lease Agreements

Waqf lease agreements differ fundamentally from the statutory sale and purchase agreements prescribed under the HDA. Whereas the statutory contracts in Schedules G and H are structured as bilateral arrangements between a licensed housing developer and a purchaser, waqf leases are by their nature tripartite. The agreement is deliberately drafted to embed the trustee's fiduciary obligations as well as rights within the contract. An example can be observed in the arrangement of Seetee Aisah Wakaf development project in Penang, where a sighting of its lease agreement provides for the requirement of the consent of the SIRC before any sublease, transfer, or alteration can take place and restricts the use of the property to purposes consistent with Islamic law. Financing must be arranged through Shariah-compliant instruments such as *Ijarah*, and succession is managed through the appointment of nominees subject to the SIRC's approval. Even in the governance of the development, the SIRC retains a supervisory role, participating with the developer and lessees in the management corporation to preserve the religious character of the project (Hashim & Rahman, 2012). These provisions highlight that a waqf lease is not merely a commercial agreement, but a trust-based instrument safeguarding the perpetual nature of the waqf.

By contrast, the HDA does not provide space for such a framework. Its statutory forms presume a straightforward relationship between developer and purchaser. The Act however does acknowledge the role of the registered proprietor where the developer and the landowner are not the same. This is seen in *Foong Seong Equipment Sdn Bhd (Receivers and Managers Appointed) v Keris Properties (PK) Sdn Bhd (No 1)* [2009] 5 MLJ 381 and reaffirmed in *Loh Tina*. The courts explained that the prescribed statutory agreement may take either a bipartite form, where the developer is also the proprietor, or a tripartite form, where the developer is separate from the proprietor. In the latter scenario, the registered proprietor of the land must be made a party to the SPA, since without the proprietor's signature the subdivided title cannot be transferred to the purchaser. This demonstrates that the HDA is capable of recognising the role of proprietors, but only in the narrow sense of facilitating transfer of title to purchasers.

The position of the SIRC as a waqf trustee is far more complex than that of an ordinary landowner. While it is the registered proprietor or the trustee of waqf land, its fiduciary role is not merely to convey title but to preserve the perpetual charitable and religious purpose of the property. The statutory schedules, however, do not accommodate such trustee obligations. If a waqf lease agreement departs from the statutory form without ministerial approval, the Tribunal and the courts as provided under Regulation 11(3), (*SEA Housing Corp v Lee Poh Choo ; Loh Tina*), will enforce the contract "as if" it was the prescribed Schedule G or H agreement, striking down any inconsistent clauses. In such

circumstances, the carefully drafted provisions designed to protect the SIRC's control over alienation, its approval rights, and the requirement for Shariah-compliant financing could be sidelined, as the HDA's protective framework is skewed entirely toward the purchaser.

This creates a structural tension. The HDA, as reaffirmed in *Ang Ming Lee*, is social legislation prioritising the protection of homebuyers. Yet in the context of waqf property, this priority leaves the SIRC and the waqf asset itself without adequate protection. Accordingly, while waqf lessees may be treated as purchasers under the HDA and thus enjoy standing before the Tribunal, the Tribunal has no jurisdiction to recognise or safeguard the distinctive interests of the SIRC as trustee or the religious character of waqf property.

The sale and purchase agreements prescribed under the HDA differ fundamentally from waqf lease agreements used in endowment-based housing. While the former is structured around a purchaser–developer relationship, the latter embeds the fiduciary role of the SIRC as trustee. The main distinctions between both contractual forms are summarised in Table 1.

Table 1: Comparison between the Statutory Sale and Purchase Agreement (SPA) and the Waqf Lease Agreement

Aspect	Statutory SPA (HDA)	Waqf Lease Agreement
Structure of Agreement	Usually bilateral between licensed housing developer and purchaser; occasionally tripartite if the landowner differs from the developer.	Tripartite – SIRC as trustee and landowner, the developer, and the lessee.
Legal Character	Prescribed forms under Schedules G and H of the HDA; focus on purchaser–developer relationship.	Trust-based instrument embedding fiduciary duties of the SIRC; drafted to preserve the religious and perpetual nature of waqf property.
Ownership and Control	Transfers ownership to the purchaser upon completion and issuance of title.	SIRC remains as trustee of the Waqf; lessee gains a long-term right of use (typically 30–99 years) subject to SIRC approval.
Restrictions and Approvals	Governed by statutory terms; no role for trustee or religious authority in approving transactions.	Sublease, transfer, or alteration requires SIRC consent; use must comply with Islamic law and the charitable purpose of the waqf.
Financing and Succession	Not restricted to any financing model; follows statutory SPA provisions.	Financing must be through Shariah-compliant instruments (e.g., <i>ijarah</i>). Nominee succession subject to SIRC's approval.
Governance Role	Does not provide a role for trustee or religious authority beyond ownership transfer.	SIRC retains supervisory authority, participating with the developer and lessees in the management corporation to preserve the religious character of the project

Aspect	Statutory SPA (HDA)	Waqf Lease Agreement
Legal Effect of Deviation	Statutory form mandatory; deviations without ministerial approval invalid.	If a waqf lease agreement departs from the prescribed statutory form without ministerial approval, only the approved portions will be enforceable. The contract will be treated <i>as if</i> it were in the statutory Schedule G or H format, and any inconsistent clauses will be rendered void.
Policy Orientation	Social prioritising protection	legislation purchaser Balances lessee protection with the SIRC's fiduciary duty to safeguard the waqf's perpetual and intended purpose.

Procedural and Remedial Limitations of the Tribunal in Waqf Lease Disputes

Even if waqf lessees are accepted as purchasers under section 3 of the HDA and therefore enjoy standing before the Tribunal, limitations still remain in the Tribunal's composition, procedure, remedial jurisdiction as well as time limit. These features reveal why the Tribunal is not aligned with the distinctive nature of waqf leases, particularly the fiduciary role of the SIRC's.

The first limitation lies in the composition of the Tribunal itself. Under section 16C of the HDA, members of the Tribunal are appointed by the Minister from among persons legally qualified or with judicial or legal experience. This ensures competence in civil and housing law, but there is no requirement that Tribunal members have expertise in Shariah law or the governance of waqf. Yet waqf leases are built on trustee obligations and religious restrictions such as prohibitions on alienation, requirements for Shariah-compliant financing, and the preservation of the perpetual charitable purpose of the land. Without Shariah knowledge, these elements are unlikely to be meaningfully considered, much less enforced, in Tribunal proceedings.

Procedurally, the Tribunal is designed to be quick and accessible for homebuyers. Section 16U(2) generally restricts representation by counsel, although legal representation may be allowed where the Tribunal considers the matter to involve complex issues of law. In addition, Rule 24 of the Housing Developers (Tribunal for Homebuyers' Claims) Regulations 2002 entitles a claimant to adduce evidence, call witnesses, and produce documents to support a claim. On paper, these provisions appear flexible enough to accommodate more complicated disputes. However, in practice, the Tribunal is structured for straightforward housing claims and short hearings, not for protracted disputes involving fiduciary duties, perpetuity of waqf property, or Shariah compliance. Even if expert evidence could be tendered, and even if leave for counsel were granted, the Tribunal's streamlined process is not designed to accommodate the depth of argument and specialist expertise that waqf lease disputes may require.

The Tribunal's remedial powers are similarly constrained. Section 16Y empower the Tribunal to order refunds, compensation, rectification of defects, delivery of vacant possession, or compliance with the terms of the prescribed sale and purchase agreement. These remedies are entirely purchaser-focused. They do not extend to upholding trustee-related provisions found in waqf leases, such as the requirement of SIRC approval before transfers, restrictions on occupation inconsistent with Shariah, or clauses ensuring the religious character of the land. If these provisions are inconsistent with the statutory schedules, they will simply be struck down, leaving the SIRC's fiduciary interests without protection.

The enforcement of Tribunal awards under Section 16AC further reinforces this purchaser-centric framework. Awards may be enforced in the Magistrates' or Sessions Court as if they were court judgments, providing strong remedies for homebuyers but doing nothing to address trustee obligations. Suppose an award enforces the statutory contract to the exclusion of waqf-specific clauses. In that case, the SIRC has no procedural recourse within the Tribunal, and any challenge would be limited to judicial review on narrow grounds.

Finally, a homebuyer must lodge a claim within twelve months from the later of: (a) the date of issuance of the Certificate of Completion and Compliance (CCC) for the housing unit or common facilities; (b) the expiry of the defect liability period; or (c) the termination of the sale and purchase agreement before completion. This limitation applies equally to conventional housing and to waqf leases, since both are susceptible to the same early disputes concerning late delivery, defects, and transfer of title. However, waqf leases carry an additional layer of complexity, as disputes can arise long after completion such as succession when a lessee dies, renewal or re-lease of units after the expiry of a long-term lease, or compliance with Shariah restrictions embedded in the agreement. Waqf housing also faces a higher risk of non-completion or delay, particularly where projects suffer from limited financing or lack sufficient backing from the State authority. These vulnerabilities mean that while the Tribunal may provide some protection for short-term issues, it remains structurally incapable of addressing the long-term and institutional challenges inherent in waqf housing.

Taken together, these features demonstrate that while waqf lessees may be protected as "purchasers" under the HDA, the Tribunal itself cannot safeguard the broader trustee obligations of the SIRC or the religious character of waqf property. Its composition lacks Shariah expertise, its procedures are too simplified for complex fiduciary issues, its remedies are narrowly purchaser-centric, its enforcement mechanisms sideline trustees, and its time limits exclude long-term disputes such as succession or renewal. In effect, the Tribunal protects

the lessee but leaves the SIRC and the waqf asset itself without adequate protection.

The discussion above, therefore, highlights a regulatory gap: while the HDA safeguards individual lessees, it fails to accommodate the fiduciary and religious obligations inherent in waqf.

RECOMMENDATIONS

The preceding analysis revealed several structural incompatibilities between the HDA and the governance realities of waqf-based housing. To address these doctrinal and governance gaps, a series of reforms are proposed to align the HDA's protective regime with Malaysia's dual legal and housing governance framework.

First, it is recommended that the Housing Development (Control and Licensing) Regulations 1989 be amended to include a new prescribed schedule for waqf lease agreements. This would enable the introduction of a Waqf Lease Agreement as an approved contractual form alongside Schedules G and H. The proposed schedule should recognise the tripartite structure among the SIRC, developer, and lessee, while defining the fiduciary duties, powers, and responsibilities of the SIRC as trustee. It should also specify the rights and obligations of lessees under a fixed-term leasehold structure and include clauses that uphold the perpetual, charitable, and religious nature of waqf property. This reform would address the incompatibility between lease-based waqf arrangements and the current statutory model, allowing waqf developments to operate within a compliant legal framework while preserving their Shariah character.

Second, the definition of "homebuyer" in Section 16A of the HDA should be expanded to include individuals who enter into a lease agreement under the new prescribed waqf lease schedule. This would resolve the current ambiguity surrounding the standing of waqf lessees before the Tribunal for Homebuyer Claims. By explicitly recognising lessees as homebuyers, the law would extend statutory protection to participants in waqf housing and bring such disputes within the Tribunal's jurisdiction.

Third, the Tribunal's jurisdiction and remedial powers under Sections 16M and 16Y of the HDA should be broadened to cover lease-based housing disputes. The amendment should enable the Tribunal to hear claims involving breaches of fiduciary duties or non-compliance with waqf lease terms and to issue appropriate declaratory or compliance orders. A structured mediation mechanism, involving representatives of the State Islamic Religious Council (SIRC), could be introduced as a preliminary step before formal adjudication to ensure that disputes are resolved in a manner consistent with both statutory and religious obligations. In addition, the RM 50,000 monetary cap should be

reviewed periodically to reflect current housing costs. These measures would enhance access to redress and promote cooperative, governance-based resolution of waqf housing disputes while ensuring parity of protection with conventional homebuyers.

Finally, the composition of the Tribunal should include at least one member with recognised qualifications or experience in Islamic law. This would ensure that waqf-related disputes are adjudicated with due regard to both statutory consumer protection and the fiduciary and religious dimensions of waqf property. The inclusion of Islamic-law expertise would also minimise jurisdictional friction between civil and Shariah authorities and enhance institutional competence in handling waqf matters.

Collectively, these recommendations would bridge the divide between Malaysia's secular housing legislation and the governance of religious endowment property. Embedding waqf-sensitive mechanisms within the HDA would not only strengthen legal protection for lessees but also preserve the perpetual and charitable objectives of waqf land. Such reforms would ultimately contribute to a more inclusive, equitable, and sustainable housing-governance framework in Malaysia.

CONCLUSION

Although waqf lessees may, in limited cases, be treated as “purchasers” under the HDA, the Act's purchaser-centric structure and the Tribunal's restricted jurisdiction are inadequate for waqf-based housing. The framework overlooks the fiduciary role of the SIRC and the governance complexities of developing perpetual religious land within a statutory housing regime.

This study highlights the need for a governance-oriented review of the HDA to better integrate waqf property into Malaysia's housing system. Broader recognition of lease-based arrangements, stronger institutional coordination between civil and religious authorities, and more inclusive regulatory oversight are necessary to balance consumer protection with the preservation of waqf assets. Such reforms would contribute to a more coherent, transparent, and equitable housing governance framework for Malaysia's plural legal environment.

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