



# **CONFERENCE PROCEEDING**

## **ICITSBE 2012**

**1<sup>ST</sup> INTERNATIONAL CONFERENCE ON INNOVATION  
AND TECHNOLOGY FOR  
SUSTAINABLE BUILT ENVIRONMENT**

**16 -17 April 2012**



Organized by:  
Office of Research and Industrial  
Community And Alumni Networking  
Universiti Teknologi MARA (Perak) Malaysia  
[www.perak.uitm.edu.my](http://www.perak.uitm.edu.my)

PAPER CODE: FM 26

## HOUSING DEVELOPMENT AND PR1MA: MYTH OR REALITY?

**Azlinor Sufian**

Legal Practice Department, Ahmad Ibrahim Kulliyah of Laws,  
International Islamic University Malaysia  
azlinor@iium.edu.my.com

### **Abstract**

*One of the mechanisms in promoting housing development in a country is by having sufficient legal provisions regulating land matters and development. Recently the Malaysian Parliament has passed a new act relating to housing in Malaysia that is Perumahan Rakyat 1 Malaysia 2011 (hereinafter referred to as "PR1MA"). It is alleged that the purpose of the Act inter alia to give opportunity to the middle income class citizens to buy houses where the corporation established through PR1MA will take care of the housing development. Nevertheless having read through the Act, it is observed that there are many ambiguities and uncertainties as to the functions of the corporation and how the corporation will carry out such functions. This paper is aimed at analysing the provisions of PR1MA Act 2011 with the intention to present the strengths and weaknesses of the Act. As this paper will involve pure legal discussions, it will use the qualitative approach and the law and practices in Scotland may be referred to as comparison.*

**Keywords:** Housing Law, Housing Development, Land, State Authority.

### **1. Introduction**

Housing development in Malaysia is governed by various laws, regulations and guidelines that are enforced either at the state or federal level. To name a few those laws are Town and Country Planning Act, 1974, Street, Drainage and Building act 1976, National Land Code 1965, Housing Development (Control and Licensing) Act 1966, Strata Title Act 1986, Building, Common Properties (Maintenance and Management) 2007 and Uniform Building By Laws 1984. The most recent statute relating to housing development that just be introduced in Peninsular Malaysia is Perumahan Rakyat 1 Malaysia (hereinafter referred to as "PR1MA"). Many publicities are duly given on the introduction of this new act which is alleged to be the mechanism to provide affordable houses to middle income citizens, especially in the urban area. It is the objective of this paper to analyse the provisions of PR1MA in order to highlight the strengths and weaknesses of the Act. Reference to the housing law and practices in Scotland may be taken as comparisons. (At the time of writing of this paper, the Perumahan Rakyat 1 Malaysia Bill just passed by the Parliament yet to be gazetted).

### **2. Literature Review**

As far as low-cost housing is concerned, no doubt it has been given fully attention since the early day of independence. (Ahmad Zakki Yahaya, 1997) Subsequently specific policy has been developed to provide 'affordable quality housing' upon realizing that the issues concerning housing in Malaysia has changed from merely accessibility to affordability and quality of housing. (Salfarina A.G and et.al, 2010). The law on housing and land development have been enacted from time to time to accommodate the needs for regulatory framework to implement the housing policy. It is quite safe to state that housing policies for lower income bracket citizens are comprehensive enough (however it does not necessarily indicate that the implementations of housing policies for this category of people are already at satisfactory level). For instance the maximum price of low cost houses is controlled by the government. As such citizens from middle income group who are not qualified to purchase low-cost houses but yet do not afford to buy even the medium cost houses, are left out within the framework of housing policy. A comprehensive housing policy, inter alia to control the house price for medium cost category is needed to enable the middle income group to own houses. (S.Shuid, 2004) In lieu of this, recently Malaysian Parliament has passed the new act on housing development that is PR1MA to ensure that the financial pressures faced by medium income people living in urban and suburban areas are addressed

immediately (Hansard, 2011). This paper will analyse the provisions PR1MA based on several headings; preamble and objective, jurisdiction, duplication of authority, functions of Corporation, powers of Corporation, coordination between state and federal government, liability of Corporation, repurchase of PR1MA homes and Appeal Tribunal.

### *2.1 Preamble and Objective*

The objective of PR1MA is to lessen the financial burden of the middle income group to own houses. (Hansard, 2011) Albeit neither the preamble nor any provisions of the Act mention about this purpose. The preamble states that it is an Act to provide for and regulate matters relating to the development and construction of housing accommodation, infrastructure and facilities under the Perumahan Rakyat 1Malaysia programme, to address the need for sustainable housing and community living in urban areas in Malaysia towards creating a strategic socio-economic housing development model, to provide for the establishment of Perumahan Rakyat 1Malaysia Corporation, and to provide for related matters. Even though it may not be necessary to place the purpose of the Act in the preamble but it is trite law that the preamble to an act may be consulted in order to shed light on the meaning of the act and its purpose. It is considered to be an essential interpretation tool. (See for instance *Pratt v. Cook, Son & Co. (St. Paul's) Ltd.* [[1940] 1 All E.R. 440])

### *2.2 Jurisdiction*

Despite the announcement is made that PR1MA is the law on housing (The Star, 2011), the statute is not placed under the jurisdiction of Ministry of Housing and Local Government, (hereinafter referred to as "MHLG"), instead it is put under the Prime Minister Department. The question here is how PR1MA development will be coordinated with other authorities on housing development that is under the jurisdiction of MHLG such as local authorities. Similarly the involvement of developers in PR1MA development are assumed to be the licensed housing developers that are governed by the Housing Development (Control and Licensing) Act 1966, while the Act is under the control and powers of MHLG.

### *2.3 Duplication of Authority*

At present there are Jabatan Perumahan Negara Berhad (herein after referred to as "JPNB"), local authorities and State Economic Development Corporations (herein after referred to as "SEDCs") of each state government in Malaysia are bodies that already involved in the development of affordable housing; this include the low-cost housing and Project Perumahan Rakyat Termiskin (herein after referred to as "PPRT") either for rent or sale. (Azlinor & Norasiah, 2009). As such the establishment of the PR1MA Corporation under PR1MA is quite unnecessary since the functions of PR1MA Corporation can be taken up by the existing authorities. Alternatively PR1MA Corporation may be formed under the existing authorities or framework, possibly under the SPNB. Indirectly this would save the expenses in managing the PR1MA Corporation and easier implementation of housing policies. Furthermore this would assist the overall control and coordination of all relevant authorities under the same ministry of MHLG.

### *2.4 Functions of Corporation*

The 15 functions of the Corporation are mentioned in section 17 of the Act. In summary the functions of the Corporation is to manage PR1MA development and PR1MA complexes, including determine the policies relating to PR1MA development and the eligibility of persons to purchase homes within PR1MA development as well as the participating developers. In comparison, there is a system known as Open Registration System (commonly known as ORS) where it set up the method for distribution of low-cost house to the eligible candidates. The system has been in operation since 1997 yet until today the implementation of ORS is still ineffective, inter alia due to lack of uniformity and coordination of various authorities (even those authorities are under the jurisdiction of MHLG) as well as lack of transparency. (Azlinor, 2010). It is highly recommended that the PR1MA Corporation will study the operation of ORS and take the lessons on its strengths and weaknesses.

### *2.5 Powers of Corporation*

Section 18(1) states that the Corporation shall have the power to do all things necessary or expedient for or in connection with the performance of its functions under this Act or any other written law. Sub section (2) further provides that the powers of the Corporation shall include the power—(a) to carry on all activities which appear to the Corporation to be requisite, advantageous or convenient for or in connection with the performance of its functions; (b) to co-operate or act in association with any Government Entity or person, whether local or

foreign; (c) to require—(i) Government Entities to give such assistance and submit such information in their possession as may be required by the Corporation in order for the Corporation to carry out its functions; and (ii) persons engaged in carrying out or intending to carry out PR1MA development to submit reports, containing such particulars and information as may be specified by the Corporation, regarding their activities or proposed activities in relation to PR1MA development.

Reading the above provision there is no clear provision provides for the selling price of PR1MA Homes and the income of prospective purchasers who are eligible to purchase PR1MA Homes. It is stated in section 33 that the allocation of PR1MA homes to eligible persons shall be conducted in a transparent and fair manner in accordance with the procedures and methods prescribed under paragraph 78(c), including by way of an open ballot. Section 78(c) gives power to the Corporation to prescribe rules relating to the procedures and methods of allocation of PR1MA. At the moment the rules is yet to be available.

Apart from that it is not clearly explain in the Act how licensed housing developers or contractors are to be selected to involve in development of PR1MA homes. Section 34(2) just provides that a person shall be eligible to apply for approval to participate in any part of PR1MA development if he fulfills the following criteria that is (a) he is a licensed housing developer under the Housing Development (Control and Licensing) Act 1966 (hereinafter referred to as “HDA”); or (b) he is a registered contractor under Construction Industry Development Board Act 1994 (herein after referred to CIDBA”); and (c) he fulfills such other criteria as may be specified by the Corporation from time to time. At the moment what are the criteria yet to be available. This provision provides that it is not necessary to be a licensed developer in order to involve in development of PR1MA Homes since even a contractor can involve in such a development. This provision is contrary with the provision of section 3 of the HDA where licensed as housing developer must be obtained if it involve in the development of more than 4 units of housing accommodation where the money is collected progressively from the purchasers as well as selling more than 4 building lots or lots of land with the intention to build houses on it. (Azlinor, 2011).

Similarly it is not clear too whether selected developers are becoming an agent to PR1MA Corporation or vice versa or whether PR1MA Corporation itself will become a government developer. Looking to the existing practice where the so called PR1MA homes have been sold (even prior PR1MA is passed by the Parliament), PR1MA Corporation will have selected developers which then sell houses to the buyers that are registered with PR1MA Corporation. Looking to this practice PR1MA Corporation is the agent to the participating developers. If this is the scenario, then all the rights and obligations as vendor/developer in schedule G, H, I or J of the Housing Development (Control and Licensing) Regulations 1989 (as the case may be) will remain with participating developers. From the perspective of purchasers, the construction of PR1MA Homes will be monitored by PR1MA Corporation, thus it will deter the possibility that the project is going to be abandoned. Basically the housing policy for affordable home for middle income group can be done even without the introduction of statutory provision or establishment of PR1MA Corporation. The existing mechanism in controlling the house price and eligibility of purchasers for low-cost housing may also be implemented for the medium cost houses. The restriction in interest on medium cost houses must be imposed on the issue document of title prohibiting the proprietors from transferring/selling the house within specified period to avoid speculative buying.

Despite the vague status of PR1MA Corporation as a developer or an agent, section 18(g) provides that the Corporation can become a manufacturer too where it provides that the Corporation have a power to directly approach, liaise with, and contract with suppliers of raw materials, finished goods or machinery either locally or overseas and manufacture materials relating to construction works either by itself or jointly with other manufacturer.

As far as rent is concern it seems PR1MA Corporation can be a landlord or can be an agent to the landlord. This position is inferred from the definition of tenant in section 3 of the Act where it states tenant as an eligible person who has entered into a tenancy arrangement in relation to PR1MA homes either with the Corporation or any other person approved by the Corporation. Nevertheless none of the provisions provide any detail on landlord and tenant relationship under this PR1MA home.

## **2.6 Coordination Between State and Federal Government**

It is well understood that housing development process will involve many stages starting from acquisition of land until handing over of vacant possession of the completed houses to purchasers. This shall involve various authorities ranging from the local authority level until the federal level that involve the ministry, in particular a MHLG.(Ismail, 2002). Section 18(2) of PR1MA states that to co-operate or act in association with any Government Entity or person, whether local or foreign. The government entity according to section 2 refers to (a) the Federal Government, the relevant State Government or local government; and (b) the relevant ministry, department, office, agency, corporation, commission, committee, board, council or other body, corporate or unincorporate, of the Federal Government, or of any State Government or local government, whether

established under written law or otherwise. This provision of section 18(2) will enable PR1MA Corporation to work hand in hand with the existing agencies that involve in housing development such as having partnership with the SEDCs in providing houses either for sale or rent.

### 2.7 *Liability of the Corporation*

It is stated PR1MA Corporation is similar to any other corporation where it has a separate legal entity and therefore can sue and can be sued. This is stated in section 3(3) of PR1MA. However as it is not clear in the Act what is the position of PR1MA in selling and renting the houses to purchasers/tenants, then the liability of PR1MA Corporation also is not clear. If it is considered as the agent, then its position for these two functions is similar to real estate agent. Therefore, PR1MA Corporation may liable under the principle of law of agency, if there is any. For instance PR1MA Corporation makes advertisements on project for PR1MA Homes but the information about the houses or project turn to be false or do not confirm with the information and specification as stated in the advertisements, then PR1MA may be liable for misrepresentation.

### 2.8 *Repurchase of PR1MA Homes*

Section 51 of PR1MA provides for right of the Corporation to repurchase PR1MA homes from the owner of the PR1MA home if the owner—(a) commits a serious breach or repeatedly commits a serious breach of any regulations or rules relating to PR1MA homes; (b) fails to pay any money due to the Corporation, including any fines or penalties imposed pursuant to any breach of any regulations or rules; (c) made a misrepresentation of a material fact, whether innocently or otherwise, relating to the purchase of the PR1MA homes; (d) made a misleading or false statement in his application to the Corporation resulting in the allocation of the PR1MA home by the Corporation to him; or (e) at any time, ceased to be a citizen of Malaysia. It is not clear what kind of act that amount to a serious breach of any regulations or rules relating to PR1MA homes. But it is hoped that those should be well mentioned in the coming rules or regulations and owners should be given fair and just treatment if PR1MA homes is to be repurchased by the corporation. Other situations where repurchase may be exercised by the Corporation over the PR1MA homes are (i) when the owner takes loan from Eligible Persons Assistance Fund and fails to repay the said loan; (ii) when the owner give false or misleading statement to support his eligibility to purchase PR1MA homes; and (iii) when the owner is no longer a Malaysian citizen since PR1MA is aimed to assist the Malaysian citizen only.

### 2.9 *Appeal Tribunal*

Appeal Tribunal is established under section 56 of PR1MA to enable any person who is aggrieved with the decision or direction of the Corporation to lodge an appeal as prescribed by section 56. As PR1MA involve a licensed housing developer, contractor, owner/purchaser and tenant, these are the persons who may file notice of appeal before the Appeal Tribunal. It is quite absurd why Appeal Tribunal is established instead of Tribunal. For protections of interest of all persons that are governed by PR1MA, it is very significant to have a Tribunal because there can be a situation where those persons may want to claim for breach of contract against the Corporation. But since it is an Appeal Tribunal, such a claim cannot be initiated before it. It is observed that section 52 provides a summary procedure for repurchase of PR1MA home from an owner in which these procedures may justly and appropriately exercise by filing a claim against the default owner before the tribunal. Thus the formation of tribunal is not only benefit to those 4 categories of persons but also to the Corporation. At the same time it will enable PR1MA Corporation to show to the public that justice is always prevail.

## 3. **Methodology**

This paper is written based on the analysis that is primarily made on the statutory provisions, in particular PR1MA that become the centre of discussions. The approach of writing is purely legal and utilised the qualitative approach. At the time of writing of this paper, the said act just passed (that is on 30<sup>th</sup> November 2011) and yet to be gazetted and enforced.

## 4. **Result and Analysis**

The author is of the view that PR1MA is intended to provide maximum assistance to the middle income group of citizens to own houses or rent houses (as the case may be), yet the newly enforced statute that is PR1MA seems to be very ambiguous. PR1MA Corporation is given such a wide power where it can be a developer or contractor or manufacturer or landlord or an agent to developer or landlord. However at the same time it is quite regret to make members of public to have a perception that now the full focus is given to the middle income

group while the lower income group is no longer be given a priority. Furthermore PR1MA is placed directly under the jurisdiction of Prime Minister Department. If that is the case, then the SPNB should be entrusted with the same power as PR1MA Corporation in order to have full gear in performing its duties to provide low-cost houses to the lower income citizens. Since PR1MA is also involve the rent of PR1MA homes, proper rights, duties and obligations on landlord and tenant as well as dispute settlement should be provided with. It is no longer sufficient to rely on the law of contract or common law per se in regulating this relationship between landlord and tenant.

The study on the law and practices of housing in Scotland shows that it is a statutory requirement that house are to be allocated to certain people in housing need. (Section 19(1) Housing Act (Scotland) 1987) These would include people who have dependent children aged 16 or under or under 19 if they are receiving full time education or training, pregnant women, people who are homeless because of a fire or flood or similar emergency, people who vulnerable as a result of old age, mental illness or handicap, physical disability or other special reasons and refugee. (Section 20 Housing Act (Scotland) 1987). The providers for this social housing are local authorities and housing associations. (Peter Robson, 2011) These houses are accessible through the schemes of tenancy, right to buy and intermediate home ownership. (David Cowan, 2011) Malaysia is also having the same schemes as Scotland for lower income citizens and those in special needs. There were three(3) bodies that had been established in Scotland to complement the duties and functions of local authorities in providing houses. Those bodies are Scottish Special Housing Association, Housing Corporation and Scottish Homes. The formation of these bodies had changed the trend of housing policy in Scotland from focusing on those in category of distressed to the provision of houses for other special needs. (Chris Himsworth, 1989) Looking to the PR1MA Corporation, its modus operandi is similar to Scottish Homes. Reading the provisions of PR1MA there is possibility for PR1MA Corporation to complement the functions of local authorities, SEDCs and SPNB. Scottish Homes is similar to PR1MA Corporation that is a statutorily created body under the Housing (Scotland) Act 1988. (C.M.G. Himsworth, 1994) The Scottish Homes work closely with the local authorities and form partnership with the local authorities in providing houses. In comparison, PR1MA at present liaise with licensed housing developers but looking to the general power of PR1MA that is possible for PR1MA to have joint-venture project with the local authorities, SEDC and JPN or any related government agencies to assure that the middle income group will have access to affordable houses. As such in terms of accessibility of houses by way of purchasing, PR1MA is quite clear. However for purpose of providing houses for tenancies, it is not clear at all how PR1MA Corporation will perform such functions. As mentioned earlier, there is an urgent need to have a proper law or statute regulating landlord and tenant as available in Scotland if PR1MA is going to implement this function. In Scotland, at present all the three authorities above have ceased to exist.

## **5. Conclusion**

The initiative made by the government in promoting homeownership and offering descent houses for rent to the middle income group is very much welcome. Sufficient legal and administrative frameworks are needed to materialise this intention. Looking to the present provisions of PR1MA, it is only a myth and not reality because without having comprehensive statutory provisions, it may not be able to support the noble intention of the government.

## **Acknowledgement**

The author would like to thank the International Islamic University Malaysia for granting a research funding to conduct a research on Housing Law in Malaysia and Scotland: A Development of Landlord and Tenant Law. Appreciation also shall be dedicated to the School of Law, Business, Management and Risk of University of Glasgow Caledonian, Glasgow for accepting the author as associate staff during period of her research in Scotland.

## **References**

- Ahmad Zakki Yahaya. (1997). *Housing the Nation: A Definitive Study*. Cagamas Berhad: Kuala Lumpur.
- Azlinor. (2007). *Housing Development (Control and Licensing)(Amendment) Act 2007: An Overview on the Latest Amendment*, Towards Residential Development Excellence: Roles and Responsibilities, Department of Urban & Regional Planning, Kuliyah of Architecture and Environmental Design (KAED) International Islamic University Malaysia, Kuala Lumpur.

Azlinor. (2009). *Equitable Distribution of Low-Cost Houses: A Malaysian Legal Perspective*, COBRA 2009 RICS Research Conference, CIB Working Commission W113 on Law & Dispute Resolution. International Council for Research and Innovation in Building and Construction, University of Cape Town, South Africa.

Azlinor & Nor Asiah. (2009). Squatters and Affordable Houses in Urban Areas: Law and Policy in Malaysia *Journal of Theoretical and Empirical Researches in Urban Management*, Number 4(13) pp. 108-124.

Chris Himsworth. (1989). *The Public Sector Housing Law*, 3<sup>rd</sup> ed. The Planning Exchange: Glasgow. p. 19.

C.M.G Himsworth. (1994). *Housing Law in Scotland*, 4<sup>th</sup> Ed. Butterworth: Edinburgh. P. 26.

David Cowan. (2011). *Housing Law and Policy*. Cambridge University Press: New York. Pp 244-247.

Ismail Omar. (2002). *Rules Affecting the Land Development in Malaysia-A Review on Environmental Impact Assessment (EIA)*. Proceedings of the 8<sup>th</sup> Pacific Rim Real Estate Society Conference 2002. Lincoln University, Christchurch, New Zealand.

Retrieved Dec 21, 2011 from:

[http://www.ppres.net/Papers/Omar\\_Rules\\_affecting\\_the\\_land\\_development\\_process\\_in\\_malaysia.pdf](http://www.ppres.net/Papers/Omar_Rules_affecting_the_land_development_process_in_malaysia.pdf).

Malaysian Parliament. (2011). Parliamentary Debate House of Representative.

Peter Robson. (2011). *Housing Law in Scotland*. Dundee University Press: Dundee Scotland. Pp 31-38.

Salfarina A.G, Nor Malina M & Azrina H. (2010). Trends, Problems and Needs of Urban Housing in Malaysia. *International Journal of Human and Social Sciences*, pp. 977-981.

Shuid, S. (2009). *Low Medium Cost Housing in Malaysia; Issues and Challenges*, Department of Urban and Regional Planning, Kuliyah of Architecture and Environmental Design, International Islamic University Malaysia. Retrieved Dec 21, 2011 from [http://www.iut.nu/Malaysia\\_low%20cost%20housing.pdf](http://www.iut.nu/Malaysia_low%20cost%20housing.pdf).

The Star. 30 Nov 2011.

UN-Habitat. (2008). *The Role of Government in the Housing Market: The Experience from Asia*.

#### **Statutes**

Housing Development (Control and Licensing) Act 1966.

Perumahan Rakyat 1 Malaysia Act 2011 (PR1MA).

Housing (Scotland) Act 1988.

Housing Act (Scotland) 1989