



PURCHASING property can be nerve-racking yet exciting, especially for first-timers. This is the feeling of many housebuyers, about to spend their

savings on the best property they can afford.

They may worry about the location and appreciation of the property but buyers should not worry about the purchase agreement as they are protected under the law. Is that true?



by Ezumi Harzani Ismail

The law makes signing a Sale and Purchase Agreement (SPA) for a house easy to the point many buyers sign blank forms, the particulars of the property to be filled in by the developer's lawyers.

Back to the earlier question; the answer is, "Yes, it is true." To some extent, buyers do not have to worry at all about the agreement.

A buyer of a new property launched by a licensed developer is protected under the Housing Development Act 1966 (Act 118).

The sale of a residential unit, be it landed or stratified, is governed by the Ministry of Urban Wellbeing, Housing and Local Government.

The SPA for landed property is standardised under Schedule G of the Housing Development (Control and Licensing) Regulations 1989 and under Schedule H for a stratified unit.

Under the regulations, no amendment can be made to the standard SPA without approval from the ministry.

The intention of the Act is to protect buyers and ensure they are not confused by variants of conditions in non-standard SPAs.

However, the Malaysian Institute of Architects (PAM) has been receiving inquiries related to certification by architects in the Third Schedule: Schedule of Payment of the Purchase Price, particularly concerning comple-

SPA stage certifications

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tion of stages 2(a) to 2(h).

On receiving a stage-completion claim from the developer, some purchasers attempt to sneak onto construction sites to view the actual progress of work on their unit before making payment, despite certification by an architect.

In some situations, a dispute arises due to differences in the perception of what needs to be completed at each stage.

As a guide for the architect preparing stage-completion certification, the Board of Architects Malaysia (LAM) has issued a General Circular No 2/2008 about components to be completed for each stage-completion certificate.

For example, under Stage 2(a) of the Third Schedule – for the certification of below-ground work on subdivided buildings – the circular clearly states that the piling, pile caps, raft slabs, footing and stumps of the building need to be completed.

However, retaining walls (not part of the foundation), backfilling, the lowest floor slabs (likewise, not part of the foundation), ground beams and

service installation are not required at this stage.

Similarly, for stages 2(b) to 2(h), the circular itemises components that need and need not be completed for each stage. A full set of guidelines concerning stage certification is available at the LAM website, <http://www.lam.gov.my>.

Stage-completion certification seems straightforward with the guidelines from LAM; but that is not always the case.

For example, under stage 2(c) concerning the certification for completion of the walls of the parcel, with doorframes in position, disputes may arise when the wall is certified complete but is without windowframes.

In traditional methods, the erection of brick walls requires door- and windowframes to be in place. However, in certain methods of construction adopting curtain wall systems, precast wall panels or an industrialised building system (IBS), the construction of the walls can be completed without windowframes in place.

Hence in this case, certification of the completion of stage 2(c) can be



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done without the need to have windowframes installed.

In other situations, the apparently simple and straightforward SPA can be complicated when modifications are made to it without a full understanding of their implications. How is this possible?

It is mandatory that the standard SPA be used for the sale of a housing unit under construction; but it is not compulsory for a completed unit or for commercial property development.

In many cases related to commercial building projects such as shopoffices, shoppots and bazaars, the developer prepared the SPA based on the standard housing development SPA, with minor modifications.

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In several cases of shopoffice SPAs, the phrase "on completion" was changed to "on commencement" in the schedule of stage certification.

Purchasers may blindly sign the SPA assuming they will be protected under the Housing Development Act; unfortunately, that is not the case.

During construction, after a few bricks are laid by the contractor, the developer claims to have fulfilled stage 2(c) – "the wall of said building, with windowframes placed in position".

The upset purchaser accuses the architect of a premature certification before realising the certification by the architect in the SPA now states "on commencement of the wall of said building...".

In conclusion, the interests of housebuyers are protected under the law. Thus buyers should not worry about the contents of the SPA.

However, the housebuyer always has a right to enquire and seek clarification about any clause in the SPA and the person to be asked questions is the lawyer who prepares the SPA.

Shop buyers are not protected under the Housing Development Act. Therefore, they should seek clarification clause by clause before signing on the dotted line.

Stages of certification – Schedule H (sub-divided building)

Schedule of payment of purchase price under Third Schedule of SPA

Stage 2(a) The work below ground level of the said building comprising the said parcel, including foundation of the said building (10%)

Works to be completed

- ▶ All foundation works below lowest floor level
- ▶ Piling & pilecaps
- ▶ Raft slabs
- ▶ Footings
- ▶ Stumps

Works that need not be completed

- ▶ Retaining wall if it is not part of the foundation
- ▶ Backfilling
- ▶ Lowest floor slab if it is not part of the foundation
- ▶ Ground beams
- ▶ Services

Source: Board of Architects Malaysia (LAM)



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