

COLLECTIVE SALES AS A LEGAL INSTRUMENT OF URBAN POLICY IN SINGAPORE

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Abstract: The Urban Redevelopment Authority (URA) is the national land use planning and conservation authority regulating and facilitating the physical development of Singapore. Every five years, the URA will issue the Master Plan to guide the development of land and property in Singapore over the next 10 to 15 years.¹ Some sites are assigned higher plot ratios, which meant that the land in question could be used more intensively. It would defeat national objectives if changes reflected in the URA's Master Plans cannot be translated into better utilisation of scarce prime land resources to meet a growing population.² Collective sales³ of strata developments by majority consent was thus introduced in 1999⁴ to help achieve this objective, among others.

Difficulties were encountered in this regard prior to 1999 as unanimous consent was required then. A single recalcitrant unit owner could block a sensible collective sale or even blackmail other unit owners as the price of his co-operation. One or two die-hards may veto an eminently reasonable proposal to dispose of the whole strata scheme or demand concessions to which they are not entitled. In a strata scheme of any size, it was highly, if not virtually, impossible to obtain unanimity amongst unit owners. Furthermore, society as a whole has an interest in the termination question to the extent that the statutory requirement then may make it all but impossible to terminate schemes which have outlived

1 See URA website, *Introduction to Master Plan* at <http://www.ura.gov.sg/uol/master-plan.aspx?pl=View-Master-Plan>. The Master Plan reflects the permissible land use and density for developments in Singapore (*ibid*).

2 With a projected population of 6.5 million in future and new economic growth sectors, Singapore would need to optimise land use and explore new ways to create space (see *Singapore Parliamentary Debates* (2007) Vol 82 at Col 1546).

3 A collective sale, also popularly referred to as an *en-bloc* sale, is a sale usually to a single purchaser, where completion of all the units is done at the same time.

4 See the Land Titles (Strata) (Amendment) Act 1999 (No 21 of 1999) which came into force on 11 October 1999 vide S 445/1999.



their usefulness as acceptable housing schemes and thus open the way for the creation of slums.⁵ In addition, the development potential of the lands in question could not be maximised.

That the collective sale regime, as a legal instrument of urban policy in Singapore, has achieved the objective of creating more housing units in prime areas and rejuvenating older developments can be seen in the fact that since 1999, almost 70% of developments for collective sale were more than 20 years old.⁶ The average age of all developments which applied for collective sale between January 2005 to August 2007 was 25.9 years which is indicative that the collective sale process is being used for urban renewal⁷ in line with the national objective of maximising scarce land resources in the public interest. In addition, between 2005 and 2009, of the 462 collective sale transactions, almost half, or 217, are being redeveloped or had been redeveloped. These 217 developments originally had 11,994 strata units but after redevelopment, the resulting new developments will have more than 26,000 strata units, more than doubling the number of strata units.⁸

Keywords: collective sales; urban policy

The Collective Sale Process

As noted above, the collective sale regime has the twin objectives of facilitating the optimal use of prime land to build more quality housing in land-scarce Singapore and to promote the rejuvenation of older estates by moving away from the then strict and cumbersome regime obtained under the old legislation.⁹ The basic idea is to enable the majority unit owners to sell the development to a purchaser without the consent of the minority unit owners, subject to the approval of a Strata Titles Board.¹⁰ In essence, the collective sale is not a contractual sale,

5 See also Rohan 'Drafting Condominium Instruments: Provisions for Destruction, Obsolescence and Eminent Domain' (1965) 65 Colum L Rev 593 at 608–611.

6 See *Singapore Parliamentary Debates* (2007) Vol 83 No 13 at Col 2047.

7 See *Singapore Parliamentary Debates* (2007) Vol 83 No 13 at Col 2036.

8 See *Singapore Parliamentary Debates* (2010) Vol 87 No 3 at Col 400.

9 See also *Ng Swee Lang and Another v Sassoon Samuel Bernard and Others* [2008] 2 SLR 597 at [5] and *Ng Eng Ghee and Others v Mamata Kapildev Dave and Others (Horizon Partners Pte Ltd, Intervener) and Another Appeal* [2009] 3 SLR 109 at [1]. See also *Singapore Parliamentary Debates* (1998) Vol 69 No 4 at Col 601.

10 Constituted under Part VI of the Building Maintenance and Strata Management Act (Cap 30C, 2008 Rev Ed) ("BMSMA") to hear applications for, *inter alia*, orders for collective sales under Part VA of the Land Titles (Strata) Act (Cap 158, 2009 Rev Ed) ("LTSA").

but a new form of statutory sale as it takes effect by virtue of the Board's order, and not by virtue of the sale and purchase agreement.¹¹

The collective sale process may be briefly described below. A pro-tem committee is usually formed to lobby for a collective sale. Before the signing of the collective sale agreement between any of the majority unit owners *inter se*, a collective sale committee is to be constituted to act jointly on behalf of the unit owners. The members of the collective sale committee are to be elected at a general meeting of the management corporation convened in accordance with the Second Schedule to the Land Titles (Strata) Act¹² ("LTSA"). As specified in the Third Schedule to the LTSA, mandatory general meetings are to be convened by the collective sale committee to discuss matters pertaining to the collective sale. The collective sale committee will take steps to interest potential buyers in the market. Upon obtaining the requisite majority consent, the collective sale committee will negotiate for a sale and purchase agreement with interested buyers. When the sale and purchase agreement has been signed between the majority unit owners and the purchaser and the requirements specified in the First to the Third Schedules to the LTSA have been complied with, the collective sale committee will apply to a Strata Titles Board in the first instance for approval of the collective sale of the strata development. Upon approval being granted by the Board or the High Court, as the case may be, completion of the sale will take place as stipulated, following which unit owners are required to give vacant possession of their units within the specified period, usually no later than six months after completion.

Erosion of Property Rights?

One fundamental question which arises for consideration is whether the rights of the minority unit owners to ownership of their private properties in a strata development can be said to be undermined by, or taken away under, the collective sale regime. Ownership of property encompasses, *inter alia*, the right to hold on to the property, quite apart from the right to alienate it. Is this right to hold on to property watered-down in the context of a collective sale? In the case of landed property, the owner owns not only the building but also the land, the boundaries of which are clearly demarcated. In other words, he owns everything. However, in respect of strata developments, there are the following main distinguishing features. In the first place, the unique feature of the communal aspect of strata

11 *Ng Swee Lang and Another v Sassoon Samuel Bernard and Others* [2008] 2 SLR 597 at [7]. See also LTSA, s 84B(1)(a) and (b) and (4).

12 Cap 158, 2009 Rev Ed.



ownership which is integral to each unit owner's property interest is not applicable to landed property. Given the communal living context, matters are, generally, dealt with by majority decision. The other main distinguishing feature is that a unit owner cannot claim that the land on which the entire strata development stands belong to him as the land is owned in common with all the other unit owners. Purchasing a unit in a strata development is effectively buying into common property and airspace, such as that involving a high-rise condominium. As the unit owners are, in actual fact, tenants-in-common of the whole piece of land on which the strata development stands,¹³ each only has an undivided share therein. And as the right to property is not just the right to hold on to property but also includes the right to freely alienate it,¹⁴ a balance has to be struck in the context of a collective sale between the interests of the majority unit owners who would like to dispose of the entire development and that of the minority unit owners who do not wish to do so. This is because in view of the special nature of strata title ownership, a disposal to a third party purchaser of the entire common property (such as the land on which the strata development stands) must inevitably bring along with it the individual units in the development. In other words, it is not possible to dispose of the entire common property without affecting or leaving intact the individual units in the strata development, the minority owners' units included. This is so despite the fact that an owner of a unit has absolute ownership of, and can identify, the airspace as delineated by his unit. Likewise, the disposal of a unit by its owner shall bring along with it the rights in the common property which is appurtenant to the unit in question.¹⁵ There is no reason why the right of a unit owner to hold on to his unit should always override the rights of other unit owners to freely alienate the entire development because all of them collectively own the entire development. It may also be noted that a collective sale looks at the redevelopment potential of the land (common property) and not the individual units. In any event, the minority unit owners are not denied their property rights in a collective sale as safeguards are put in place in the LTSA as seen below. Given the above scenario, the approach in the LTSA is not to deny one or the other of

13 LTSA, s 13(1).

14 See *National Provincial Bank Ltd v. Ainsworth* [1965] AC 1175 at p 1233G where Lord Upjohn stated that it has been "the policy of the law for over a hundred years to simplify and facilitate transactions in real property." See also AM Honore, "Ownership" in AG Guest (ed), *Oxford Essays in Jurisprudence* (1961), Chap V at p 118; FH Lawson & B Rudden, *The Law of Property* (2nd edn, 1982), Chap 1 at pp 8 and 11 and Chap VII at p 116; C Lewis, "The Modern Concept of Ownership of Land" [1985] *Acta Juridica* 241 at p 250; CG van der Merwe & MJ de Waal, *The Law of Things and Servitudes* (1993), at p 98; and K Gray & S Gray, *Elements of Land Law* (2nd edn, 1993), at pp 97-98 where he observed that "...land must be allowed to be freely alienable or commerciable. Transactions in respect of legal estates in land...must not be unduly restricted or hampered by law, for the uninhibited alienability of land is essential to the effective functioning of an exchange economy. Land is a highly marketable resource and it is vital that the market in land should not stagnate."

15 LTSA, s 13(3).



their rights completely as the question is really one of balancing two components of the right to property in a strata development, namely, the right of one group (the minority unit owners) who would like to hold on to the property and an equally legitimate right of another group (the majority unit owners) who wants to exercise its rights to alienate property. Seen in this manner, the approach taken in the LTSA with regard to collective sales cannot be said to undermine or erode the right to property or right of home ownership in Singapore.

Balancing the Competing Interests in a Strata Scheme

A sale of the entire development negotiated by the unit owners collectively will often bring a higher price than one where the unit is sold individually. Minority unit owners were seen to be sidelined in the collective sale process. It has been aptly remarked by the Singapore Court of Appeal, the highest court, that:

“...The lure of ‘windfall profits’ has been a siren song for many (especially absent landlords and speculators), to the detriment of those who do not want to lose their homes at any price. As a result, bitter acrimony and strained relationships have often arisen between owners who want to sell and those who do not want to sell their units. ...”¹⁶

Incidents involving minority unit owners being subjected to underhand tactics in the sale process and having had their cars scratched and property vandalised as well as families threatened were reported in the newspapers.¹⁷

Given that the statutory scheme of collective sales is here to stay, at least in the foreseeable future, it is, thus, imperative that the rights and interests of all affected parties are taken into account¹⁸ and adequately protected, especially that of minority unit owners who oppose the sale. Some of the main features of the statutory scheme which seek to balance the competing interests involved are considered below.

(i) *Requisite consent level*

The majority consent level of 80% or 90%, as the case may be, is pegged to the age of the development. For a development which is ten years or older, the

16 See *Ng Eng Ghee and Others v Mamata Kapildev Dave and Others (Horizon Partners Pte Ltd, Intervener) and Another Appeal* [2009] 3 SLR 109 at [2].

17 “En bloc sales bring out the worst in Singaporeans”, *Sunday Times* 1 June 2008; “Vandals keen on en-bloc sale damage cars”, *Straits Times* 24 July 2008; “Laguna Park vandals strike again”, *Straits Times* 28 July 2008; “Condo’s MC chairman nabbed”, *Straits Times* 28 August 2008; and “Ex-condo chief scoffs at fine for mischief”, *Straits Times* 22 April 2009.

18 See *Singapore Parliamentary Debates* (1998) Vol 69 No 4 at Cols 635-636.

consent of unit owners with at least 80% of the share values¹⁹ as well as the total area of all the units is required for a collective sale to go through.²⁰ In the case of a development less than ten years old, the majority consent level is higher at 90%.²¹ The percentage requirement seeks to strike a balance between the interests of the majority and minority unit owners, taking into account the policy objectives of the collective sale statutory scheme. The percentage requirement applies to all unit owners alike.²² For example, it makes no distinction between resident owners and investors of units in a development in light of the present regime of property ownership which does not discriminate on this basis. The percentage requirement in terms of area of units will mitigate the bias against residential unit owners in a mixed development who may hold lesser share values but own a substantial floor area.²³

The ten-year criterion is a reasonable time-frame which sets apart the older developments which are more likely to be sub-optimally utilised, have higher repair bills and have more unit owners in favour of collective sales. This will enable the land to be better utilised and its economic potential maximised.²⁴ It might be argued that in place of the ten-year criterion a longer time-frame, say 20 years or 30 years, be used instead. Buildings would be much older and in greater need of repairs, and so a stronger case can be made for redevelopment. However, this argument overlooks the point that the land in question may have already been assigned a higher plot ratio some years after the completion of the development, which means that the land concerned can be used even more intensively. It will also defeat national objectives as elaborated earlier.

(ii) Formation of collective sale committee, etc

The members of the collective sale committee are elected at a general

19 The share value is a figure that represents the proportionate share entitlement assigned to each unit in a strata development. The general principle in allocating share value is based on the floor area of the units, such as for single use residential and non-residential developments. For a mixed-use development, the use of weight factors for each type of units are also considered. The share value determines, *inter alia*, the voting rights of the unit owners, the quantum of their undivided share in the common property and the amount of their contributions to the management or sinking fund levied by the management corporation (LTSA, s 30(2)(a)-(c)).

20 *Ibid*, s 84A(1)(b).

21 *Ibid*, s 84A(1)(a).

22 Other jurisdictions which have adopted a similar approach include Ontario (Condominium Act 1998 (Cap 19), s 124), New Brunswick (Condominium Property Act 1973 (Cap 16), s 19) and Nova Scotia (Condominium Act 1989 (Cap 85), s 40) in Canada and Hawaii (Condominium Property Regimes (Cap 514A), s 21(a) and Condominium Property Act (Cap 514B), s 47(a)) in the US, all of which require 80% of the unit owners to vote in favour of the sale of the strata scheme.

23 *Singapore Parliamentary Debates* (2007) Vol 83 No 13 at Col 1997.

24 *Singapore Parliamentary Debates* (1998) Vol 69 No 4 at Cols 633–634 and *Report of the Select Committee on the Land Titles (Strata)(Amendment) Bill [Bill No 28/98]* at iii-iv.

meeting of the management corporation convened in accordance with the Second Schedule to the LTSA.²⁵ This is to enable unit owners to decide officially if such a committee should be formed. If they so decide, then the members of the committee will be elected at the general meeting convened by the management corporation. It will go to ensure that the process is transparent, that the members to be elected have been carefully considered and serve to inform all unit owners of a possible collective sale of their development. In the process, the interests of the minority unit owners are also protected. This is a departure from past practice which was informal, less structured and transparent where those unit owners who were interested in exploring a possible collective sale of their development would form an *ad hoc* sale committee to get the process going. Compared to the previous position, the procedural clarity in regard to the formation, function and proceedings of the committee has been further enhanced.²⁶

(iii) Mandatory general meetings

Before an application can be made to a Strata Titles Board for an order for sale, it is mandatory for the collective sale committee to convene one or more general meetings of the management corporation in accordance with the Second Schedule to the LTSA for all the unit owners to discuss the issue of collective sale of the development.²⁷ This is to ensure transparency, especially for the minority unit owners who will get to know full details of the sale at the meetings prior to an application being made to a Board. The convening of general meetings will, *inter alia*, facilitate a full airing of views, discussion on the terms of sale and distribution of the sale proceeds. The requirement for general meetings to be held will also help to address the issue of harassment and intimidation, if any, of the unit owners concerned as well as give unit owners the opportunity to scrutinise the marketing and property agents involved in the collective sale.

(iv) Signing of collective sale agreement in presence of advocate and solicitor

The collective sale agreement is to be signed by the unit owner in the presence of an advocate and solicitor appointed by the collective sale committee.²⁸ This is a departure from past practice which did not regulate the drafting and signing of the collective sale agreement. Unit owners will now get

25 LTSA, s 84A(1A)(a).

26 *Ibid*, Second and Third Schedules.

27 *Ibid*, s 84A(3) and Third Sch, para 7(1) and (2).

28 *Ibid*, First Sch, para 4.



to know the important information²⁹ mentioned in the agreement and come to an informed decision before they sign the agreement. The requirement to sign before an advocate and solicitor is meant to address the issue of harassment, intimidation or duress of the unit owner concerned as well as misrepresentation of the terms. It will also give the latter an opportunity to clarify the terms of the collective sale agreement before he signs it. This requirement that an advocate and solicitor must be present when the collective sale agreement is signed will go towards ensuring the integrity of the transaction.³⁰

(v) Cooling-off period and notice of rescission

The collective sale agreement must be accompanied by a notice, in the prescribed form,³¹ that may be used by the unit owner to rescind his agreement to be a party thereto.³² He may do so by serving a notice of rescission within the cooling-off period which shall be a period of five days (excluding any day which is a Saturday, Sunday or public holiday) after the day on which the collective sale agreement was signed by him.³³ The notice of rescission must be signed by the unit owner and served personally on the advocate and solicitor appointed by the collective sale committee. Providing for a cooling-off period will address the issue of unit owners being pressed to sign the collective sale agreement under duress or misrepresentation or as a result of harassment or intimidation. It will also give them an opportunity to reflect on their decision after they have signed the agreement and to further clarify the terms of the agreement. This will ensure that the consent that the unit owners give is informed, genuine consent.³⁴

Factors to Consider in Application for Collective Sale

An application for collective sale will not be approved by the High Court or a Board if the transaction is not in good faith after taking into account, *inter alia*, the sale price obtained for the strata development. The LTSA does not define the

29 For example, the reserve price for the development; the apportionment method for the proceeds of sale; the fees payable to the advocate and solicitor, marketing agent and other person involved in handling the collective sale; and the date of delivery of vacant possession of the unit. (*ibid*, First Sch, para 3(a)-(f))

30 See *Singapore Parliamentary Debates* (2010) Vol 87 No 3 at Col 382.

31 See The Schedule to the Land Titles (Strata) (Notice of Rescission) Regulations (Cap 158, Rg 2, 2010 Rev Ed).

32 LTSA, First Sch, para 5.

33 *Ibid*, First Sch, para 6(1).

34 See *Singapore Parliamentary Debates* (2010) Vol 87 No 3 at Col 382.

meaning of good faith in relation to the factor of the sale price. The words ‘good faith’ is not merely confined to whether the sale price is fair or not, but also how the price is arrived at.³⁵ The words “good faith” have a core meaning, comprising the characteristic of honesty or absence of bad faith.³⁶ Accordingly, to show that a collective sale transaction is not in good faith, some dishonesty, improper motive or bad faith must be established, recklessness and negligence *per se* not being sufficient.³⁷ A breach of duties by the collective sale committee is, thus, relevant in determining whether a collective sale transaction is in good faith.

The legislative framework for collective sale does not provide for personal and emotional matters to be taken into account. Such non-legal issues are not within the ambit of the LTSA as they are subjective in nature, such that they are not susceptible to mediation by a Board or adjudication by the High Court. They are not factors that the High Court or a Board may take into account in determining whether or not the transaction is in good faith. The LTSA clearly directs that the High Court or a Board shall only take into account the factors specified therein and nothing more. Examples of objections which are emotional or personal in nature include: (i) the minority unit owner’s sentimental attachment to the flat; (ii) his familiarity with the area; (iii) the flat is in a good location; (iv) he has been living there ever since a child; (v) the flat is near his children’s school; and (vi) on the basis of *feng shui*.³⁸

The High Court will not approve an application for collective sale, even if the transaction is conducted in good faith, if, having regard to the objections, it is satisfied that (a) any objector, being a unit owner, will incur a financial loss; or (b) the proceeds of sale to be received by any objector, being a unit owner or mortgagee, are insufficient to redeem any mortgage in respect of the unit.³⁹

A unit owner is taken to have incurred a financial loss if the proceeds of sale for his unit, after such deduction as the High Court may allow (including all or any of the deductions specified in the Fourth Schedule to the LTSA⁴⁰), are less

35 *Ng Eng Ghee & Ors v Mamata Kapildev Dave & Ors (Horizon Partners Pte Ltd, Intervener) and Another Appeal* [2009] 3 SLR(R) 109.

36 *Dynamic Investments Pte Ltd v Lee Chee Kian Silas & Ors* [2008] 1 SLR(R) 729 at [17].

37 *Ibid*, at [20]–[23].

38 See, for example, *Tan Hui Peng & Ors v Chow Ai Hwa & Anor* [2006] SGSTB 2 where the objection based on the ground that the minority unit owner’s late husband’s spirit would have no place to go if her flat was sold was disallowed.

39 LTSA, s 84A (7)(a) and (b).

40 For example, (a) stamp duty and legal fees paid on or in relation to the purchase of the unit; (b) costs incurred pursuant to the collective sale which are to be shared by all unit owners as provided under the collective sale agreement, such as the legal fees incurred as well as the costs of advertisements and valuation reports. This will provide more certainty to unit owners who intend to make financial loss claims.



than the price he paid for his unit.⁴¹ However, a unit owner will not be taken to have suffered a financial loss by reason only that his net gain from the sale of his unit will be less than the other unit owners.⁴²

Some Areas for Reform

Some aspects of collective sales which come to mind which may warrant a review are discussed below. These suggestions will promote greater transparency in the collective sale process and ensure a better balance of the competing interests involved.

Under the LTSA, the members of a management council assist the management corporation in the upkeep, maintenance and management of the development.⁴³ Given the nature of the role played by members of the management council, a pertinent question arises as to whether members of the council should, at the same time, also serve as members of the collective sale committee. It is clear that the role played by the latter is the direct opposite of the management council, namely, to effect a sale of the development. Their roles are different. Given the conflicting interests and duties arising from the different roles played by a management council and a sale committee, it might be preferable to disallow members of a management council from serving at the same time as members of the sale committee.⁴⁴

Given the potential collective sale of the development, the management council may not upkeep and maintain it. Not doing so may result in the development being in a dilapidated state. This will be an additional reason for the sale committee to “induce” the uncommitted unit owners to sell the development given the state of disrepair. There is an “incentive” for members of the management council to not maintain and upkeep the development where they also serve, at the same time, as members of the sale committee. Hence, the suggestion above that they should not be permitted to serve on both committees at the same time. While complaints may be lodged with the Commissioner of Buildings in respect

41 LTSA, s 84A (8)(a).

42 *Ibid*, s 84A (8)(b).

43 BMSMA, s 29(1)(a) and (b).

44 This was one of the feedback received by the Ministry of Law in a public consultation held from 2 April to 12 May 2007 on the Ministry’s proposed changes to the collective sale legislation (see “Response to Feedback Received from Public Consultation on Proposed Changes to the En Bloc Sale Legislation” para 5.1, published on the Ministry of Law’s website on 23 November 2007). No legislative provision has since been enacted to deal with this issue.

of the “neglect” of duties,⁴⁵ the management council may, nonetheless, take the practical view that to incur additional maintenance expenses would be wastage in light of the imminent sale of the development. Legislation to clarify the grey areas in respect of these duties of the management council in the collective sale process would be helpful.

In regard to the make-up of the collective sale committee, ideally it should also comprise of representatives of the minority unit owners who stand to be persuaded that a collective sale of the development is in the best interest of the unit owners as a whole. Such a composition will enable the sale committee to hear the arguments of both sides on matters pertaining to the viability of a collective sale. It will ensure a full airing of views as to matters pertaining to the sale and the concerns of minority unit owners. Opportunities for abuse by those in favour of a collective sale will also be minimised and kept in check. However, the issue of minority representation⁴⁶ on the sale committee has become less pressing given the stringent duties required of the sale committee laid down by the courts where it has to conduct itself with high standards of accountability.

The relationship of the purchaser and the marketing agent for the development must also be scrutinised. This is to ensure that there is no conflict of interest or collusion between them. A marketing agent may arrange with a purchaser to obtain a commission from the latter in the event of a successful sale which may not be in the best interest of the unit owners. In fact, any possible conflict of interest situations between any of the parties involved in a collective sale, including property consultant and legal firm, should be addressed.

Conclusion

Given the national objectives to be achieved in introducing the collective sale regime, collective sales as a legal instrument of urban policy in Singapore will continue to play a prominent role in the foreseeable future. At the same time, safeguards are put in place and relooked from time to time to protect the interests of the minority unit owners. Going forward, the ongoing task is to strike a proper balance between ensuring transparency and clarity of the sale process on the one hand and not making collective sales unduly onerous on the other so as to achieve the national objectives discussed above.

45 “Response to Feedback Received from Public Consultation on Proposed Changes to the En Bloc Sale Legislation”, *ibid*, para 11.2.

46 As the collective sale agreement will require all members of the sale committee to sign on it, appropriate legislative amendments will have to be made in respect of the formation of a sale committee to enable minority representation.