



Legal Ramifications of a Private Lease Scheme Property Sale by Malaysian Developers

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Abstract

This paper aims to evaluate the legal ramifications of a private lease scheme to the purchasers. Instead of transferring ownership of the property, the developer transfers a 99-year-old lease in a PLS. Upon expiry the lease, the purchasers are obliged to pay a price in return for the renewal of the lease or the property shall be reverted to the registered proprietor. Consequently, the purchasers were misled to believe that in return of the full payment, they will be transferred with ownership of the property. In the existing legal framework, the developers must transfer ownership of property to the purchasers.

Keywords: Private Lease Scheme; Developer; Certificate of lease; Misrepresentation

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1.0 Introduction

The mechanism of a PLS is based on a lease transfer by a lessee. The land in question must be a freehold land tenure to create a 99-year lease over the land in question. The developer could own the land intended for development, where the developer will be the lessor. The developer entered a lease transaction with the registered proprietor in another situation. The lease shall comply with Chapter 15 of the NLC. The registered proprietor shall grant a 99-year lease to the developer. The developer will become the master lease concessionaries, apply for a subdivision of the land, develop a housing project, and later sell the subdivided plot to the purchasers. Instead of selling the unit and transferring ownership of the subdivided plot, the developer shall transfer a lease to the end purchaser.

The agreement is a sale of a 99-year lease to the purchasers. The document that conferred the sale of the lease is called a Lease Purchase Agreement (LPA). Thus, the LPA shall stipulate the right to renew the lease to avoid disputes. The lessee shall apply for the renewal to the lessor, and it is at the liberty of the lessor to grant renewal of the lease. It should be noted that the renewal is subject to a consideration that the lessee must provide a consideration. As a lessee, the purchaser's right over the land is only related to the building. Whereas, under the NLC, the definition of land includes the land's surface and anything attached to the land. Summarily, the building bought by the purchaser that is attached to the land, in law, belongs to the registered proprietor of the land, not the purchaser. Ultimately, lease renewal will also involve a new payment from the purchaser to the lessor.

Consequently, under Malaysian land law, the LPA signed by the purchaser only resulted in the creation of interest in land or possessory rights, not land ownership. The legal implication from the PLS is that the purchaser's interest in the property shall diminish as it is nearing the expiry of the lease. Inevitably, the property's value shall depreciate towards the expiry of the lease.

The abovementioned issue is compounded when a developer develops and sells the property unit since the HDA governs housing development in Peninsular Malaysia. The Sale and Purchase Agreement (SPA) between a developer and purchasers is statutorily prescribed under the Housing Development (Control and Licensing) Regulations 1989 (Regulations 1989), either schedule G, H, I or J. In 2012, the PLS Scheme mooted in Johor to sell a lease to purchasers hurt the developer. The developer in *Wong Hang Foh & Ors v Tropika Istimewa Development Sdn Bhd* (KL High Court Civil Suit No: WA-22NCVC-120-03/2018) was required to transfer the ownership of the houses to the purchasers. The Court decided that the developer had misrepresented the purchasers for selling a lease under the sale and purchase agreement (SPA). Then in 2020, the developer varied Schedule G into a PLS in *Loh Tina & Ors v Kemuning Setia Sdn Bhd & Ors and Another* [2020] 7CLJ 720. The Court ordered that the lease transfer be cancelled and replaced with a transfer of title favouring the purchasers. In 2019, the government abandoned the proposal to introduce a 'Register of Private Lease' into the National Land Code 1965 (NLC)

to enable the concept of PLS. (Parliament, 2019). A PLS deprives the purchasers of property ownership, and their fate is at the landowner's mercy to extend the lease period (Loong, 2020). Under a PLS, the purchasers' sale and purchase agreement are not for the sale of the property but a lease over the unit under the Master Title. The lease-purchase means the purchasers remain a registered Lessee who derives a contractual right from the developer and not an ownership transfer of the property. Thus, the purchasers merely acquire an indefeasibility of interest only upon lease registration.

The research questions of this study consist of the following:

- Is the existing law on lease as a private dealing under the NLC compatible with a Private Lease Scheme (PLS)?
- What are the legal ramifications of the sale of property under the scheme of PLS under the HDA, Strata Titles Act 1985 and Strata Management Act 2013?

The research objectives are as follows:

- To study the compatibility of the existing legal framework of a lease as a private dealing under the NLC to the conceptual framework of a sale of property under the Private Lease Scheme (PLS)
- To evaluate the legal ramifications of the sale of property of the PLS under the HDA, Regulations 1989, Strata titles Act 1985 and the Strata Management Act 2013.

2.0 Literature Review

In Malaysia, a lease is commonly known as 'rent', which benefits something in return for a payment. Statutorily, the word 'lease' has not been defined anywhere in the NLC. However, in *Equity Corporation Sdn Bhd v Thye Sun Quarry Sdn Bhd* [2002] 6 MLJ 74, even where the instrument is called an 'agreement', it may still be construed as a valid lease. According to (Teo K.S., 2016), to constitute a lease, the lessee must be granted exclusive possession to pay rent. Under the NLC, a lease must be registered to create a legal interest. Lease registration evidenced the registered interest in land (Patton, 1934). In *Margaret Chua v Ho Swee Kiew & Ors* [1961] MLJ 173, Thomson CJ held that an unregistered lease is valid as an agreement for lease. Meanwhile, in *Lee Lum Soh v Low Ngah* [1973] 1 MLJ 97, the Court held that an unregistered lease was "void as a lease for non-registration."

The PLS is a long tenancy; to put it another way, the housing developers sell a lease to the buyers. The lessee will not have proprietary rights on a lease, so it is not the typical process of selling and buying a home. Because of this, the Housing Development (Control and Licensing) Act of 1966 (HDA). Under the PLS the developers offer, the purchasers will have 'no proprietary rights' since the landowners will remain the legal owners in perpetuity. Further, the Sale and Purchase Agreement (SPA) is not for the sale of the property but for the sale of a lease over the property. The sale effectively means that the purchasers shall remain only as a lessee who derives a contractual (not legal) right from the developer and not as the owner. In furtherance of this issue, a stratified property owner must form a

Management Corporation (MC) to manage and maintain the common property. As a registered proprietor, only the owner can form a member of the MC. Thus, the obligation to form MC as provided under the Strata Management Act 2013 (Act 757) (SMA) (Chang Kim Loong, 2020) cannot be carried out by the purchasers who merely attained the status of a lessee. The PLS concept is associated with advantages to the private landowners and not the purchasers. Furthermore, its restrictions do not apply to purchasers.

In order to give the lessee exclusive ownership of the land for the duration of the lease period, both parties have a mutual interest in agreeing to a term of more than three years. Upon lease registration, the lessee shall acquire an indefeasible interest under Section 340(1) of the NLC. The Lease Agreement has been created and finalised following contract law and Form 15A, a required form for leasing under the NLC. A lease agreement cannot give rise to an irrevocable interest in the property unless the statutory form is submitted to the Land Authority for registration. Most significantly, the lessee is aware from the start of the lease agreement that he must vacate and hand over the property to the lessor upon the expiry of the lease.

According to the NLC's strict interpretation, the innovation by the developers inventing a sale of lease over the property sold to purchasers under the PLS entails a transfer of a lease that the developer, who is the lessee, obtained from the registered owner of the land, who is the lessor, to the purchasers of the housing project. To transfer the lease from the developer to the purchasers, the developer must complete Form 14A and the regulated SPA required by HDR 1989. The buyers will not agree to the sale of the property if it is disclosed to them that it is a transfer of lease, not a transfer of ownership. On the one hand, the developer is aware that, as a lessee of the land rather than the registered owner.

The developer must apply for the strata title within three months of the completion of the superstructure stage, according to the 2015 amendment to the STA. The building's subdivision request should be made to the Land Office by the building's original owner. This responsibility is essential since the original owner would commit an offence and be subject to a fine of not less than RM10,000 and not more than RM100,000 and a maximum sentence of three years in prison. Each day the offence goes unpunished, there is a fee ranging from RM100 to RM1000. Thus, the primary responsibility of a developer is to apply for a subdivided title and transfer it to the buyers.

Section 206(3) of the NLC recognises the law of equity and the right in personam, which entitles a lessee to sue under the lease agreement for specific performance. In *S&M Jewellery Trading Sdn Bhd & Ors v Fui Lian-Kwong Hing Sdn Bhd* (2015), the Court will determine the case based on the contract terms the parties entered. However, the equity will be applicable only if the lessee has equitable grounds, such as he has expended money on the land in the expectation of being allowed to remain in occupation. The expectation was based on the inducement and encouragement by the owner of the land. Moreover, a lease was void in *Pembinaan Eastern Aluminium Sdn Bhd v Narita Shipping & Transport Sdn Bhd* [2014] 5 CLJ 431 [COA] for non-registration under NLC.

Nevertheless, the agreement for the lease is valid and enforceable. The lease agreement and the circumstances reflected the clear intention of both parties to agree on

the grant of a lease. Both parties are aware of the terms and conditions of the lease agreement.

The lease period is for a term exceeding three years according to Section 221 of the NLC, and the maximum lease term is 99 years if it is over the whole land lease. Section 221(3)(b) of the NLC only allows a maximum of 30 years over part of the land. The purchasers in PLS only purchased a unit in the high-rise building.

Hence, the developer is only leasing part of the land. Thus, the purchaser's rights as a lessee in PLS will only be a maximum of 30 years. Section 228 (1) of the NLC provides the lessor's discretion to grant the extension upon application by the lessee. Hence, developers under a PLS transfer the lease to a unit in a Master Title, creating a lease over part of the land, and the maximum period shall only be 30 years. Creating over part of the land for more than 30 years violates the NLC resulting in a void transaction.

Even if the lease is registered in favour of the purchasers, creating multiple leases over the same piece of land violates Section 225 of the NLC. This provision cannot grant a lease to two or more persons other than the trustees or representatives. Another obstacle is the lessor's involvement in a lease transfer or charge. The Purchasers of a PLS Scheme are obliged to apply for written consent.

2.2 The Legal Obligations of a Developer under the HDA & Regulations 1989

The developers must strictly comply with the SPA prescribed under Regulations 1989. In *Sentul Raya Sdn Bhd v Hariram Jayaram & Ors and Other Appeals* [2008] 4 CLJ 618, Gopal Sri Ram JCA explained in his judgment that a construction contract is a particular contract that is prescribed and regulated by statute. In *Encony Development Sdn Bhd v Robert Geoffrey Gooch & Anor* [2016] 1 CLJ 893 Nallini Pathmanathan JCA held that the provisions in the SPA are not merely contractual but are, in effect, statutory provisions. Any collateral contract to exist alongside the SPA violates the law that renders the contract void. In the *Loh Tina*, Lee Sweng Seng JCA held that compliance with Regulation 11(1) of Housing Developers (Control & Licensing) Regulations 1989 (Regulations 1989) in any SPA is clearly and manifestly mandatory. There should be a waiver or modification of any of the provisions of the contract of sale if there is a certificate in writing granted by the Controller. The PLS undeniably deviates from the regulated contract under Regulations 1989 that caused the transaction to be void.

According to *Veronica Lee Ha Ling & Ors v. Maxisegar Sdn Bhd* [2011] 2 MLJ 141, the HDA safeguards buyers' interests in residential properties that are currently being built. Following this precedent, the Court of Appeal ruled in the case of *Loh Tina & Ors v Kemuning Setia Sdn Bhd & Ors and another appeal* [2020] MLJU 635 that any deviation from the regulated contract must be unlawful because HDA was primarily designed to protect naive buyers from dishonest developers (Zolkafli et al., 2014). The regulated contract under HDR 1989 grants home buyers the right to acquire property ownership. The PLS, however, is distinct from the regulated contract. In his ruling, the Court in the case of *Loh Tina* posed the question, "Who would desire a leasehold when legally they are entitled to a freehold property in a sale and purchase of a house to be built by a developer?"

2.3 The Legal Rights of the Purchaser

The law only recognises legal rights to a registered proprietor instead of a lessee, particularly regarding the protections afforded under the HDA. The dealing of "lease" does not come within the ambit of the Strata Titles Act 1985 (STA), and therefore, there is no requirement for subdivision of the building or land under the NLC or the STA (Siang et al., 2015). For property purchasers, strata title is essential to the parcel owners as conclusive evidence of ownership and provides rights to become members of the management corporation and voting power. (Khadijah H. et al, 2016). Upon issuance, the buyers are registered as the proprietor of a strata title (Commissioner of Building, Annual Report, 2015). Under Section 7 of the STA, the developers are obliged to apply for the subdivision of the building or land because it is conclusive evidence of ownership. Accordingly, a registered owner possesses voting rights and share unit entitlements under Section 36 of the STA. However, as a lessee, a PLS purchaser is not entitled to a voting right under the Strata Management Act 2013 (SMA) because it is only vested to a proprietor of a strata title with voting rights to the number of share units and not a lessee.

Furthermore, only a registered proprietor can automatically become a Management Corporation (MC) member under the SMA (Chang KL, 2020). In *Wong Hang Foh & Ors v Tropika Istimewa Development Sdn Bhd* (KL High Court Civil Suit No: WA-22NCVC-120-03/2018), the Court decided that the developer had misrepresented the purchasers for transferring a lease instead of a strata title. A Lease Purchase Agreement dated October 18, 2012, was signed by the defendant/developer and the plaintiffs/purchasers in place of a sale agreement as required by Schedule H of the HDR 1989. The parties have agreed to perfect a lease transfer after issuing strata titles. Additionally, the developer was given the go-ahead to build a stratified housing development on the land within 48 months of the contract's signing.

In contrast, Schedule G of Regulations 1989 mandates that the developer complete the delivery within 36 months of the agreement date. However, in a more recent case *Kaisar Maxim Sdn Bhd v. Cheah Poh Hin* [2021] 8 AMR 379, the Court determined that a Schedule H of the HDR 1989 violation only deems the contested part of the agreement invalid. It does not declare the entire agreement as void ab initio.

2.4 The Implication of PLS on the Purchasers of a Strata Scheme

In Malaysia, multi-storey properties are known as strata schemes and will be issued titles. The law provides a strata scheme as a property development that divides a building or land into plots, accessory plots and common property. Thus, the main elements of strata scheme development are divided into parcels, accessory plots, share units and common property. The Strata Titles Act 1985 (Act 318) is an act that regulates the subdivision of buildings or land into parcels, issuance of title, disposal of title and collection of tax and for purposes connected therewith in the development of a strata scheme in West Malaysia. An application to obtain the approval of the State Authority to subdivide a building must be made in Form 1 of the STA to the State Authority.

Section 6 of the STA provides that any building two or more storeys on alienated land held as one lot under the final title (whether Registry or Land Office title) shall be capable of being subdivided into parcels, and any land on the same lot shall also be capable of being subdivided into parcels each to be held under a strata title or an accessory parcel. The Management Corporation (MC) is established when the strata register is opened, as provided under section 17 (3) of the STA. The MC is the joint property owner consisting of all parcel owners and is the custodian of the title documents of the issue for the land on which the building is erected.

Regarding the management of a strata scheme, the relevant law is the Strata Management Act 2013(SMA). Only after the transfer in favour of the proprietor (Parcel Owner) is perfected and registered do all parcel owners have the right to vote at the Annual General Meeting or the MC Extraordinary General Meeting; these meetings are held to decide matters relating to the management of their strata schemes following Clause 21(1) Second Schedule of the SMA. Each proprietor shall have one vote regarding each parcel on a show of hands and a poll (Aminah et al., 2020). Clause 21(1) of the SMA uses the word "Proprietor" to describe the voters' eligibility in an Annual General Meeting of the MC. Under section 2 of the SMA, no definition of "proprietor" is provided. It only states that the definition of a proprietor shall be referred to as the definition of "Proprietor" under section 4 of the STA. Section 4 of the STA refers to a parcel proprietor, a person or body for the time being registered as the proprietor of a parcel. The definition clarifies the eligibility of the voters, where it only refers to a person registered as the owner of the parcel. Many may need to be made aware that being a purchaser or a beneficial owner of the strata property does not automatically qualify him within the definition of proprietor under the STA. A purchaser/owner must be registered with the land office/registry as the parcel owner to be entitled to vote in the AGM (Lai, 2020).

According to Lai (2020), between the year of 2013 to 2016, section 22 STA (Amendment) 2013 made it a criminal offence for any purchaser who fails to perfect and register the transfer of strata title within thirty (30) days from the date of notice of transfer of strata title being served to the purchaser by the original proprietor or from the date of purchase of the parcel, whichever is the later. If found guilty and on conviction, the purchaser shall be liable to a fine of not less than RM1,000.00 but not more than RM10,000.00 per parcel. It was subsequently deleted from the Act effective September 9, 2016, according to the Strata Titles (Amendment) Act 2016.

Consequently, the STA and SMA require the purchaser's status registered as "proprietor/owner" for eligibility to manage the strata scheme. Hence, a purchaser under a PLS who merely obtains an interest of a Lessee is not eligible to involve in the management of a strata scheme. The definition of "proprietor" is a narrow interpretation. The lack of awareness may result in purchasers not being eligible to voice their grievances, concerns, and suggestions regarding the building management, which may directly affect the value of their property.

3.0 Methodology

This article is divided into two sections that draw on primary and secondary sources for a more profound knowledge of the study topic. The doctrinal research examines the legal standing of a property transaction under a PLS Scheme in domestic and international countries. The research is undertaken by reviewing primary data from legal legislation, focusing mainly on the NLC, STA, SMA, and HDA, as well as court cases and secondary data from various sources. The Court's legal reasoning is analysed to establish PLS's impact on the various property transfers. The theological technique determines if PLS is a fair and just property sale deal for the buyer. This study examines the legal implications of PLS transfer under other laws/jurisdictions, as any Malaysian law does not cover the notion.

This investigation employs a socio-legal study design and qualitative approach. The qualitative technique was chosen for this study because it is the most acceptable means to collect essential data for answering the research questions. Silverman (2010) opined that the qualitative method would provide a flexible option for information collection from respondents and a deeper understanding of the concept of a PLS and its implication for purchasers. According to Creswell (2013), the qualitative technique is utilised for several reasons. When questions begin with 'how' or 'what' rather than 'why,' the qualitative technique is the most appropriate approach, it examines the nature of the topic instead of just its motivation. Hammarberg (2016) summarised numerous reasons a researcher should choose a qualitative methodology. First, when the research questions require factual facts to be answered. Second, this approach should be utilised when the experiences, views, and opinions of the respondents may provide answers to the research questions. Lastly, the qualitative approach successfully identifies possible legislation and practice implementation difficulties.

Using the perspectives of Creswell, Silverman, and Hammarberg in adopting a qualitative technique, research questions were devised to determine the compatibility of the PLS with the current legislative framework governing the developer's sale of real estate. All parties' opinions on a developer's property sale are gathered during the interviews. Using the qualitative research approach necessitates that the likely answers to the research questions be researched and discussed in real depth. The analytical procedure entails transcription, the creation of codes and categories, the identification of themes, and the interpretation of the respondents' feedback and input. Thematic and content analysis is used to analyse qualitative data from interviews.

4.0 Results

The interview analysis looks at the legislators', attorneys', and developers' perspectives on the PLS's legality. Based on the interviews, an analysis is done to see whether this idea benefits the buyers and whether the PLS and the current legal system are compatible. The relevant housing industry stakeholders involved in selling property under the PLS were subjected to a series of interviews. The title will be declared indefeasible under the NLC

following the registration of the instruments of the dealings. The core of the PLS is the transfer of a 99-year lease to the purchasers in exchange for payment of the purchase price. This lease will only grant the purchasers an indefeasible interest as the lessees. Therefore, the primary goal of the interviews is to assess how well the conceptual framework of a property sale under the PLS and the current legal structure of a lease as a private dealing under the NLC match. The interviews were conducted to simultaneously assess the legal implications on the sale of property of the PLS under the HDA and the HDR 1989, the STA and the SMA. The interviews with the policy-makers viewed the PLS as a mechanism that may provide an alternative to the purchasers when buying houses. The purchasers who opted to have a lesser burden in maintaining the real property could opt for PLS.

The interviews revealed that the housing industry's evaluations of the PLS system were quite comparable. According to the respondents, the core of the PLS is already present in the legal system. To ensure the buyers' interests, a specific legal framework for the PLS should be developed to make it legally available. In order to protect the interests of the buyers, the Theory of Property emphasises the significance of tenure security. When used in practice, the PLS can be abused by developers, which leads to unfairness toward unwary buyers when they buy housing accommodations under the PLS.

Regarding the PLS's conceptual framework, it should be noted that the purchasers' position as lessees under the PLS differs noticeably from the idea of ownership under a transfer of title, as shown by the sheer number of cases where this had happened when the buyers were not adequately informed about the PLS's terms. The findings lead to the conclusion that to legally execute the PLS as a whole. It is necessary to amend some provisions of the legislation governing the sale of dwellings to purchasers. The housing industry will inevitably press forward with a legal framework for a PLS as a substitute housing accommodation, notwithstanding the public outcry against the concept of PLS that is prejudicial to the purchasers.

Lawyers are preparing the LPA between the developers and purchasers. The purchasers rely on the lawyers to guide them through the legal process and protect their interests when a property is sold. Most conveyancing lawyers have impressive 5–30 years of expertise in land transactions and come from various legal firms in the Klang Valley and other regions of West Malaysia. Their answers to the surveys reflect the legal community's viewpoints on purchasing houses under the PLS. The respondents believed PLS is incompatible with the current legal framework regulating housing development. The existing law requires a transfer of ownership to the purchaser. To a certain extent, a developer shall be penalised if it fails to apply for the subdivision and issuance of a separate issue document of title or a strata title.

The respondents also cautioned developers to clearly explain the implication of buying a property under a PLS since they must be made aware of the depreciation of the property when nearing the expiry of the lease and the renewal process that involve payment of a new lease.

The interviews with the developers discovered that the perceptions of the industry players regarding the PLS system were similar. The respondents believed that the nucleus of the PLS is already embedded in the legal framework. However, to make it legally accessible, a specific legal platform relating to the PLS should be created to safeguard the purchasers' interests. The Theory of Property prescribed the importance of the security of tenure in upholding the interest of the purchasers. The respondents also admitted that the PLS, in practice, could, however, be exploited to the advantage of the developers and, consequently, contributes to injustice towards the unsuspecting purchasers when purchasing housing accommodations under the PLS. Relating to the conceptual framework of the PLS, it should be noted that the status of the purchasers as the lessees under the PLS has striking differences from the concept of ownership under a transfer of title, as evidenced by the number of reported cases on the issue in circumstances where the purchasers were not adequately informed on the nature of the PLS.

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5.0 Discussion

5.1 The compatibility of the PLS Scheme with the existing law from the viewpoint of the Policy Makers

All the Respondents from the policymakers noted the non-compatibility of the PLS with the existing legal framework that may cause the sale transaction to become illegal. Respondent 1 caution that the result of a lease transfer under the PLS is prejudicial to the status of the purchasers because they only become the registered interest holder and will have to surrender the property at the end of the lease period.

Interestingly, one respondent views that land ownership does not benefit the proprietor of a housing accommodation. She acknowledges the existence of the two different views of

society. In the first view, they need to own the land to ensure that they can pass it on to their ancestors. In contrast, there is also a different view that they only need a place to stay and having a leasehold tenure means they will not be responsible for the house repairs in the future. She quotes the directive from Jabatan Kerja Raya Malaysia (JKR) Pekeliling KPKR 1/2013 dated January 10 2013, relating to the useful life of a building. The directive provides that the useful life of a concrete house/building is only 50 years. The useful life of the building components, such as the septic tank, fibre-reinforced plastic, or reinforced concrete, is only 5-20 years.



Figure 1: Summary Findings of the Legal Ramification of a PLS in Malaysia

The water reticulation systems (soft steel cement lining and high-density polyethylene) have a useful life of 15 to 20 years. The swimming pool (tile packaging and waterproofing) is for ten years, and the lighting wiring is for 15 years. On average, buildings can experience significant depreciation when the building begins to reach the age of 15 years (useful life component of development), experiencing increased maintenance costs critical when beginning to reach the age of 50 (whole life of building structures and substructures) and facing the lowest level of security at age 80. It refers to the depreciation value of a building. Thus, owning property may not be profitable to the owners in the long run because they have to repair the building to ensure its safety and worthiness. A PLS may be more profitable to the purchasers since they do not have to bear the repair cost of the building. Furthermore, passing on the old property with a building may be complicated and burdensome to the new owners.

5.2 The viability of the introduction of a certificate of the lease relating to the PLS

The respondents representing the policymakers believed that the lease provisions were sufficient to become the legal platform of a PLS. All the Respondents opine that a lease certificate is redundant and will impose an unnecessary burden on the Land Authority to provide a certificate for a Lease under the PLS. All recognised dealings will be endorsed on the Register Document of Title (RDT) and attained indefeasibility of interest under Section 340(1) of the NLC. However, a dissenting view of the respondent representing the policy maker opined that having a certificate reflects the PLS 99-year-old lease tenure. The terms are provided to ensure understanding if the property under the PLS unit were to be transferred to another third party.

5.3 The Purchasers' Protection Buying Houses under the PLS

All the Respondents representing the policymakers view that the PLS could be the ownership alternative to the purchasers, but some amendments need to be made to the existing law. In particular, the HDA and STA laws require the housing developers to apply and transfer the separate issue document of title/ strata title to the purchasers. The policymakers' respondents specifically suggested adding a specific schedule for a PLS with additional requirements before a PLS is sold to the purchasers. The government should provide a legal platform for a PLS alongside the existing sale agreements. They opined that the developers should clarify the characteristics of a PLS system before the purchasers commit to the sale. The information should be made available to the purchasers because it involves a transfer of the property's title. At the end of the lease tenure, the property shall be reverted to the proprietor. The purchasers must also be informed of the value depreciation in a PLS property.

5.4 The Lawyers' Perspectives on the Compatibility of the PLS with the Law

All the Respondents (Lawyers) opined that caution should be exercised by the housing industries when developing housing accommodations under a PLS. The developers should be transparent, and the policymakers should impose strict guidelines for the sale of housing accommodations under the PLS. All the Lawyers' Respondents were again in consensus by stating that complete information on the concept of the PLS must be made known to the purchasers before signing any sale agreements to avoid any misunderstanding or misconception about buying houses under the PLS. In a nutshell, most of the lawyers believed that the characteristics of the PLS are similar to a private lease under the NLC. It is viable for the developers to implement the lease transfer to the purchasers.

6.0 Conclusion

Creating a legal framework is crucial to validating the PLS because it is a novel idea, and neither the HDA, NLC, nor STA include any provisions that permit the scheme. With a statute, the PLS is compatible with the rules governing developers' real estate sales. Hence, imposing the PLS renders the developer's sale transaction void. Nevertheless, the PLS may be a cheaper lodging option than another land ownership plan, particularly for people looking for homes in urban locations. Australia's introduction of a certificate of lease could increase tenancy security and make the property transfer process more accessible. Ultimately, a PLS that offers a Leasing certificate provides a broader range of choices. Ultimately, a PLS that issues a Lease certificate gives a broader option for anyone to have a shelter. An amendment to the HDA introducing a new Schedule to cater to the PLS is timely because the purchaser's status is only a Lessee and not a Proprietor. To ensure the eligibility of the Purchasers of a PLS to form the management corporation and be entitled to a legitimate voting right, amendment of the HDA is timely by incorporating a new Schedule that could work legitimately for the unit buyers of a PLS. PLS requires a regulated agreement with distinct responsibilities and obligations for the developers because it is based on a lease-purchase agreement, which represents a lease transfer rather than ownership. The lease-purchase agreement's terms and conditions should specify the rights, liabilities, and duties of both the purchasers and the developers. As a result, the HDR 1989 needs to add a new schedule called a "Lease Purchase Agreement." The NLC and STA revision must provide a legal platform introducing a Certificate of Lease. Last but not least, the Strata Management Act 2013 must include the term lessee in the eligibility of the purchasers to form a management corporation and voting right during the Annual Meeting.

A PLS that issues a lease certificate provides everyone with a broader range of shelter options. Given that the purchasers are mere lessees and not owners, a revision to the HDA by introducing a new Schedule to accommodate the PLS is appropriate. The SMA should be changed to ensure PLS buyers are qualified to form the MC and have voting rights. The SMA should include the term "lessee" in addition to "owner" because the latter refers to the person who occupies a stratified property unit. Thus, the lessees ought to be qualified to attend the meeting. In addition, the update to the HDA Regulations, which includes a new

Schedule that can legally benefit PLS unit buyers, is timely. To provide a legal framework for implementing a Certificate of Lease for the lessee under the PLS, it is concurrently necessary to amend the NLC and STA rules.

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Paper Contribution to Related Field of Study

This paper addresses the legal implication of a PLS in light of the existing legal framework for the sale of property by developers. The suggestions provided in this research may assist the policymaker in providing a secure system of purchasing property from developers.

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