

# Property outlook 2015

PART 1



> Views and comments of industry-related professionals

**H**AVING just stepped into the new year, there is some form of uncertainty as to what one can expect in the following 12 months. Many begin the year a little hesitant. With that, we seek the views and comments of:

- ▶ president of the Malaysian Institute of Estate Agents (MIEA) Siva Shanker (SS) who is also CEO of PPC International a property consultancy firm;
- ▶ economics proficient Dr Yeah Kim Leng (YKL) who was involved in research on various national economic policies and current school of business dean at Malaysia University of Science and Technology (MUST);
- ▶ Datuk Ng Seing Liong (NSL), chartered accountant and senior partner of an accounting firm, managing director of a development company and Rehda patron and past president; and
- ▶ Italian expat Daniele Gambero (DG), residing and working in Malaysia since 2000, CEO and co-founder of REI Group of Companies, dealing in property and real estate investments.

**theSun:** Looking at how the market fared in 2014, can you share with us your view about what our local property market can expect in 2015?

**SS:** Before we go to next year, let's look at the last few years. Refer to the table and you'll notice the decline in the number of property transactions. The reason for the drop is due to the cooling measures imposed by the government and the demand for the primary market instead of the secondary market (not much speculation in the secondary market). The developers had all these freebies - there was the 100% financing where purchasers did not need to come up with a down-payment; then there was the DIBS, the stamp duty and legal fee waivers - these made it so attractive to purchasers that some didn't have to take out their wallets from their pockets to buy property. Many who could not afford jumped onto the bandwagon to buy. Bank Negara then thought it was unhealthy so in Jan 2012, Bank Negara imposed the responsible lending guideline which brought the market down. Then in 2013, all the other cooling measures were announced. This saw a lot of speculative effect dying off in the market which is why the transactions went down.

Prices however, still either stayed or even went up a bit. So, the whole cooling measures exercise wasn't really effective as it was not achieving its purpose. I think, although we only have figures for the first half of 2013, if I take the figures from the first half of 2014 and do a simple multiplication and times it by two (193,000 transactions multiplied by two) I get about 386,000 (refer table) which is a very slight improvement from 2013, which leads me to believe that 'the downward slide is coming to an end.' My opinion is that 2014 will be a bit of a flat line - for me a couple of percent up and a couple of percent down, I assume it as a flat line. This is what I expect the figures to display when they are announced later this year. We will see that there was really no growth but neither was there a decline. More importantly if there was a decline, I believe that there was a slow down or the coming to a stop.

For 2015, I believe it will be more or less a flat line. Even if there was growth, there will be a very minute 5% growth which is okay as the important thing is for the market to adjust itself and arrest the decline. I don't believe values will come down as prices increase.

**YKL:** Despite toppish prices, increased vacant units and easing rental yields amidst rising supply in selective commercial and medium to high-end residential property segments, the local property market is expected to remain resilient. Besides positive GDP growth expectation of around 5% next



## PROPERTY MARKET REPORT

2011	2012
Volume of Transactions 430,403	Volume of Transactions 427,520
Value of Transactions 137.83 billion	Value of Transactions 142.8 billion
2013	2014 1H
Volume of Transactions 381,130	Volume of Transactions 193,405 (386,810)
Value of Transactions 152.37 billion	Value of Transactions 82.03 billion (164.06 billion)

year, the property market, especially the residential segment, will derive support from a sizeable portion of the population looking to own a home. With property prices cooling and credit tightening, we see less vigorous demand for investment and speculation purposes. The property supply-demand dynamics in 2015 therefore is expected to shift more strongly towards the affordable mass market range while the middle and high-end segments will become more selective and niche.

**NSL:** Looking at the stock market now, liquidity will surely be affected. I think there will be less demand for high-end properties. But landed property and affordable housing should not be affected as the budget has considered the man on the street. Middle income earners will benefit as I think prices of property for these types of housing will stay or won't go up much higher than it is. In any case, I would like to state a caveat here that property prices are always based on location, demand and supply. Having said that, I think

speculative properties will need to be cautious. People who want to speculate or are thinking of making a fast buck will need to be cautious as with this type of liquidity, it is difficult to push up property prices, especially when the market has already lost about 20% to 30% and our ringgit has also gone down - these will surely affect our liquidity and financial strength. Generally, I think 2015 will be a challenge for the Malaysian construction and housing industry.

**DG:** I think the local property market shall remain quite soft for the high-end segment, above all in those areas which have experienced an "over-supply" of residential high-end products in the last few years. I'm instead expecting a strong demand from the affordable housing segment (overall Malaysia RM200 to RM700 psf), tourism-driven developments in Kota Kinabalu, Penang and in some areas of Iskandar Malaysia and industrial development (this last one all in flagships C, D and E of Iskandar Malaysia).

**SS:** I don't think any estate agent has seen phenomenal growth. That mad rush to buy before GST will happen in the first quarter of 2015. Malaysians being Malaysians, everything last minute - so my opinion is that there will be a bit of a frenzy and even a price escalation before the implementation in GST. We don't like these sudden spikes which lead to sudden falls. We prefer a nice slow, steady growth that is sustainable over the medium to long term. We don't like spikes that last for two to three years and the crash that follows. Maybe in the first three months there will be market frenzy but the market will settle down and find its own level. On the whole, I think 2015 will see a flatline market, not much growth or slow either way. My analysis of that is "the downward slide is over, the flatline has begun and the next wave of upward slide will happen in 2016 and 2017".

From my point of view, the developer has no choice but to raise the price. First of all, the land he is buying is getting more and more expensive, construction costs are also going up and when GST kicks in, that will bite again. Cost of labour will also go up. Every sale has to be higher than the other sale. Land cost is really a bare amount of the developer's total development cost. They say that residential property will not be affected by GST but all the other items that go into building the residential is going up and these are not zero-rated. So, there will be GST implications in the building cost. For the developer, it will cost him more to build and he will have no choice but to cost it more to sell.

**theSun:** With the implementation of GST on April 1, 2015 and the changes in Budget 2015 - do you foresee any impact it will have on the local property market?

**YKL:** Property developers and market specialists have estimated that the GST will result in prices rising approximately 4%. Property prices therefore will remain firm in the run-up to GST as buyers lock in the pre-GST prices. Given the heterogeneity of property types and values, the before and after GST prices will be harder to enforce. Nevertheless, the softer demand especially for investment purposes that is anticipated for next year will help to cap prices from escalating. Further, firming interest rate and tighter lending conditions will help to keep the lid on undue price increases.

**NSL:** On residential property, I think there will be a small marginal increase, around 2.5% to 3%. On commercial properties, once GST kicks in, there will be an increase of about 6%. I would also like to state that Rehda and the construction industry has made an appeal to the government to re-look at the GST rate for the construction and property industry as 6% is a very high rate. Many contractors and building material distributors are not even making that 6% profit. If you look around the world, the 6% GST rate is not cast in stone. In fact, other countries have different GST rates to suit each industry. More often than not, Malaysian property also attracts stamp duty. So on one hand you are paying stamp duty and on the other hand, you have GST - it's like a double blow for the consumer who will, in the end, have to take up these extra charges.

**DG:** The impact will be more psychological as developers are not expecting high increases from GST. I'm also concerned by the incoming change of BLR to BR (starting from Jan 2, 2015) which has not been clarified enough to the general public in terms of applicability, advantages and eventually, higher costs.

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# Property outlook 2015 PART 2



## > Views and comments of industry-related professionals

**C**ONTINUING from our feature yesterday on what to expect in the property scene this year, here are the additional views and comments from:

- ▶ president of the Malaysian Institute of Estate Agents (MIEA) Siva Shanker (SS) who is also CEO of PPC International, a property consultancy firm;
- ▶ economist Dr Yeah Kim Leng (YKL), who was involved in research on various national economic policies and current school of business dean at Malaysia University of Science and Technology (MUST);
- ▶ Datuk Ng Seing Liong (NSL), chartered accountant and senior partner of an accounting firm, managing director of a development company and Rehda patron and past president; and
- ▶ Italian expat Daniele Gambero (DG), residing and working in Malaysia since 2000, CEO and co-founder of REI Group of Companies, dealing in property and real estate investments.

**theSun:** Any tips on areas where the market is expected to flourish in the Klang Valley, surrounding towns and other states? Please explain why you think these places will do well.

**SS:** I am of the opinion that as properties get more and more expensive, closer and closer to the city, people will just have to get used to buying property further away on the outskirts. That trend is already quite apparent even now with recent launches in rather far away places like Rawang, Selayang, Ipoh and Semenyih. People now know where these places are and don't consider these the boondocks. We are now coming to the next wave of purchasing behaviour where people will just have to learn that they need to go further to buy properties as the ones closer to the cities have become inaccessible in terms of pricing. But don't forget that even the further away ones are not cheap. These are top notch, high-end properties which will lead us to realise that location, although important, may not be the be-all-and-end-all of property purchase any more. What becomes important now is branding, look and feel, facilities and services, accessibility, design - all these have now become important elements in buying property. People don't mind living far away now with arterial roads that lead directly there and back and only requires an additional 10 minutes or so than the guy who lives nearer town. So I believe that these properties that are farther away will start to do well. The developers already recognise this and are willing to pay top dollar to buy land in suburban areas to develop.

**YKL:** Due to land scarcity and built-up infrastructures and amenities, property demand and prices in urban areas will be less affected by cooling monetary and fiscal measures. Nonetheless, with affordability becoming a constraint coupled with newly built units entering the market, property prices will have lower tendencies to escalate. The major cities especially those with dynamic businesses and strong employment generation will continue to experience buoyant take-ups but prices will not be as heady as during the last few years. New launches will likely see stable prices. Those priced higher will see special features and enhancements thrown in to entice buyers. Property developments centred on existing and new road infrastructure, and transport linked developments, will continue to generate sustained buyer interest; likewise for those in the vicinity of large commercial and industrial facilities, where job vacancies are aplenty.

**DG:** Greater KL and Klang Valley will surely see an expansion directed towards West and South. Reason why these two directions will be expanding in terms of mixed and residential developments are:

- Available land at reasonable values.

- Lower land cost means more affordable houses which will drive the development of commercial and integrated projects. Township might become the product to look into in the near future.
- TOD (Transit-oriented developments) with the confirmed MRT Line 2 which alignment will be officially announced within March, LRT Line 3 KL-Shah Alam-Klang and the newly proposed 12 BRT lines (which will complete the integration of public transportation offer for the area).
- Projected population growth of Greater KL to 10 million people by 2020 is on its own, a more than enough big driver, for the local property market to grow.

**theSun:** Any investment strategies or property trends one should be aware of?

**YKL:** The US Federal Reserve is likely to be "patient" in raising interest rates, pushing the likelihood of a rate hike to the second half of 2015. A similar scenario is seen for Malaysia. Any rate hike will have a negative impact on the Malaysian property market but it will not derail the market as long as economic growth, and consequently employment and income increase, is sustained.

**DG:** For sure, we will be very active in the Southern Corridor of Klang Valley (Sri Kembangan to Nilai) where we are currently offering freehold properties at very affordable values and helping some developers to plan future development of high rise affordable TOD developments. We are currently working on several very exciting projects mostly "retirement homes" and "tourism" driven located in Iskandar Malaysia, Kota Kinabalu, Malacca and Ipoh. Keep an eye focused on our web site to be able to get the information on launches.

Personally I'm also looking at some very interesting and really affordable residential and mixed projects in Klang and Iskandar Malaysia which should be launched during the first quarter 2015 with prices below RM500 psf. I am promoting a crucial aspect of property investment and education. It is extremely important for today's buyers

to know as much as possible on the property market before making a buy decision. Hopefully investors in future will be less emotional in their choices and do more due diligence on their choices before confirming the purchase.

**theSun:** As Rehda patron and past president, can you share a little about Rehda Youth?

**NSL:** Rehda Youth is a new arm under Rehda that was established about two years ago. The members are young and have done a good job in accordance to our succession plan. They may seem a bit aggressive but they're still under control (chuckles). We are still overseeing these members and guiding them. Although their set up seems more like a social club but Rehda Youth will mature as we are grooming these members to take over from us older ones. We start them as a social club, guide them and let them see how we manage the association. Then we identify their leadership qualities and eventually they will be given the responsibility to lead.

Malaysian house price index and all house price annual from year 2000 to Q2 2014

YEAR	INDEX 2000=100	ALL HOUSE PRICE (RM)
2000	100.0	138,712
2001	101.1	140,507
2002	103.6	144,830
2003	107.7	150,705
2004	112.9	156,549
2005	115.6	160,654
2006	117.8	165,111
2007	124.0	172,464
2008	129.8	179,359
2009	131.8	184,002
2010	140.7	196,720
2011	154.6	216,034
2012	172.8	241,591
2013	192.9	266,304
2014 - Q1	202.7	280,886
2014 - Q2	204.5	283,328

## Property outlook conference

**THE** Property Outlook Conference 2015 (POC 2015) will be held on Jan 10 and 11 at the Royale Chulan Hotel, Kuala Lumpur. Organised by Wealth Mastery Academy, the conference will provide real insights into the outlook of the Malaysian property climate in the coming year offered by notable property players.

Themed "Insights + Opportunities + Strategies", POC 2015 also offers unfair opportunities to stay ahead and brilliant strategies to maximise investment returns. Wealth Mastery Academy CEO Datuk Terry Ong says while there is talk of crisis and a troubled economy in 2015 which will affect the real estate market, more importantly it is knowing "there are opportunities waiting in every challenge or crisis that arises." Hence, with the best insights, alternative opportunities and smart strategies in property investment, POC 2015 promises to be a great avenue for property buyers and investors to gain much knowledge of the property market in 2015 and make informed decisions.

The panel of speakers are all specialists in their respective fields of expertise:

- ▶ **Datuk Stewart LaBrooy**  
CEO & executive director of Axis REIT Managers Bhd

- ▶ **Siva Shanker**  
President of Malaysian Institute of Estate Agents (MIEA) & CEO of PPC International Sdn Bhd
- ▶ **Ho Chin Soon**  
Founder of Ho Chin Soon Research
- ▶ **Ishmael Ho**  
Real estate map maker
- ▶ **Milan Doshi**  
Property guru and best-selling author
- ▶ **Dr Daniele Gambero**  
CEO and co-founder of REI Group of Companies
- ▶ **Tan Hwa Chuan**  
Director of BIG Group of Companies Real Estate Advisory
- ▶ **Vincent Wong**  
International property investment speaker and best selling author
- ▶ **Agnes Wong**  
Managing partner of Syarikat Ong and Tax Consultant

Some of the topics of discussion at the conference will be:

- ▶ Where is the property market heading to in the next five years?
- ▶ The latest property market trends and features.
- ▶ Property outlook for the next hot, warm and cold areas for both residential and

**theSun:** Can you share briefly on the REN identification tag, the number of registered RENs and how the system has panned out thus far?

**SS:** The exercise started late in 2014. 22,000 to 23,000 have attended the mandatory course; about 12,500 have applied for the tag. With this, we are now able to distinguish the legal negotiators from the illegal ones who don't have a tag. We remind the public to ask the negotiators for the ID tag. If he or she does not have a tag, do not deal with the person because you will not be protected under the law if something goes wrong. If you lose your money and lose your deposit, what are the chances of you getting your money back? The official launch of the tag system was in June 2014, the pre-launch was in October 2013.

The law is in place and the law is very clear that if you are not a registered agent or if you don't work under a registered agent, you cannot sell properties for a fee. Enforcement of the law is the weakest link in this chain to stop this illegal selling of property. Once the police start enforcing the law and nabbing some of these culprits, my opinion is, the majority of these illegal negotiators will rush to do the course and get certified. Then they will at least work for legal estate agencies where they will be monitored and the deposits they collect will not be in their name but in the clients' account under the estate agency. The client's account, by virtue, is under the act of parliament. There are so many laws and rules that govern the conduct of the clients' account. So the money is safe. If these registered agents do anything wrong, you can always complain to the board and the REN can be tracked down and legal action can be taken against them.

**DG:** REI Group and myself have always strongly supported the introduction of the new TAG with a REN (Real Estate Negotiator code) number for all the Malaysian Real Estate negotiators. Unfortunately there are still too many people (vendors, buyers, landlords and tenants) that are not asking the negotiators to show their TAG and, in case they don't have it, drop them. MIEA president Siva Shanker has done a great job in promoting the BOVAEA campaign and in training, personally, thousands of negotiators. I really hope everyone in this forthcoming 2015 will start using Siva's tagline: "No Tag No Talk"!

- commercial investment.
- ▶ Population movement of Greater KL with implementation of MRT2 and LRT3.
- ▶ How to build a positive portfolio that increases in value and generates passive income?
- ▶ The challenges in the GST era. How should investors prepare for GST's implementation?
- ▶ What other alternative investment opportunities should investors look into?
- ▶ Knowing the smart investment strategies to profit from these uncertain times.

The conference is expected to attract over 1,000 participants namely real estate investors including first-time home buyers, developers, financiers, master planners, property agents and project managers.

Guests can also catch the exhibition which will showcase some of the exclusive and sought after property projects in and around the region for the year to come as well as leverage on exclusive deals offered by developers. For more information, please log on to the Property Outlook Conference website.

▶ Email your feedback and queries to: [propertyqs@thesundaily.com](mailto:propertyqs@thesundaily.com)



LEGAL INPUT

BY DATO' PRETAM SINGH DARSHAN SINGH

# Housing developer advertisements

> Awareness on house purchasers' rights and developers' due compliance

HERE has been many suggestions lately, spearheaded by the House Buyers Association of Malaysia (HBA), that the way forward to address purchaser complaints against developers is their non compliance with the law and the ability to get away with it. By large, developers are law abiding and continue to deliver as promised. Therefore, why should the majority suffer for the irresponsible acts of a few black sheep in the industry? Clearly, there is an urgent need to enhance purchaser capacity where their rights are concerned.

Personally, I think we should work towards improving purchaser awareness in relation to their rights and developers' obligations under the Housing Development (Control and Licensing) Act 1989 - 1966; as we must be reminded that we have one of the foremost legislations in the world in relation to purchaser protection. What is lacking is proper understanding and due compliance.

THE "ADVERTISEMENT"

One of the many ways to protect house purchasers in Malaysia is to control the contents of housing developers' advertisements.

The word "advertisement" here refers to any notification or intimation of housing development. The act of notification merely means any act of informing the public at large, about a proposed housing development. Words like "proposed housing development" or words indicating the business of housing development, can be found in a property brochure.

Intimation, on the other hand, may refer to hints or indirect suggestions, or informing subtly or indirectly, that there is a proposed or pending housing development project. Whatever the form of intimation or notification, the developer is required to have a permit (AP) issued by the Controller of Housing (who is the Ketua Setiausaha of Kementerian Perumahan dan Kerajaan Tempatan) before any form of advertisement is brought about.

THE MANY FORMS OF ADVERTISEMENT INCLUDE:

- a) publication in any newspaper, journal or magazine, or in the form of a brochure; or
- b) in any other form or display on any hoarding, boarding, roof, wall, piling, fence, frame, signboard, plate, cloth, bar/pillar, post, wire-casting or other erection, structure or contrivance; or
- c) conveyed by means of film or communication; or
- d) conveyed by other means (oral or written) and whether of the same kind or not, as set out in paragraphs (a) to (c).

The Housing Development (Control and Licensing) Regulations 1989 not only controls the types of advertisements but the contents of such advertisements. It is mandatory that the following particulars are inserted, no matter how big or small the advertisement: (a) the housing developer's license number and validity date; (b) the advertisement and sale permit number and validity date; (c) the name and address of the licensed housing developer and

- his authorised agent, power of attorney holder of project management company, if any, as approved by the Controller;
- (d) the tenure of the land, if the land is leasehold, its expiry date, restriction in interest and encumbrances, if any, to which the land is subject;
- (e) the description of the proposed housing accommodation;
- (e-i) any parking lot which is an accessory parcel to the housing accommodation and which does not form part of the common property of the accommodation; (This amendment in 2007 was inserted to ensure that the number of parking lots attached as

be deemed invalid. Under the regulations, any misleading statement, false representation, incorrect description of particulars or information required is an offence.

DISCLAIMER CLAUSES

Many a time we find Disclaimer Clauses like "This is an artist's impression only"; "Subject to change by Developer"; "The architect can vary the plans". These are not valid despite the clause being inserted into the advertisement/brochure/leaflet by the developer. Firstly, such disclaimer clauses are never approved by the Controller of Housing

and secondly, according to the recent amendment to standard form contract which are detrimental to the consumers.

BROCHURE OVERRIDES SPA

Judges are of the need to protect purchasers from these promotional materials and have held that statements made in brochures by housing developers are not "mere puffs" but can be said to be undertakings, which the developer is bound to honour.

Since an advertising and sales permit is required by the Act, and has specific particulars that need to be disclosed, the nature of the brochure by developers is legally binding. If the drawings and details of the brochure mislead the homebuyer, the homebuyer will have a valid case against the developer.

persuade him to make not any mere booking but a commitment to purchase by payment of a non-refundable deposit."

- ▶ C) In Dato' Soo Lai Sing v Kumpulan Sierramas (M) Sdn Bhd & Anor [2004] 3 MLJ 546, the Court was of the view that "the developer did represent to the purchaser, that it would provide special security features at the housing estate and for this reason, the plaintiff was completely persuaded to purchase a housing lot to later reside there. Such security features must exist and must be in operation at the time when any purchaser had come to stay in the house he purchased in the housing project. Since the developer had failed to provide the special security features as represented, such omission is tantamount to an act of misrepresentation."

There are also incidents where the completion date in the advertisement may differ from the date in the Sale and Purchase agreement or some information in the brochure differs from that in the written agreement. The question is which one prevails, the SPA or the brochure? The answer: The expected date in the brochure prevails over the date in the SPA.

- ▶ D) In Faber Union Sdn Bhd v Tribunal Tuntutan Pembeli Rumah [2011] 7 CLJ 37, the High Court upheld my decision made before the Tribunal, that the date stated in brochure as the date of completion prevails over the date in the SPA.

Statements made in the brochures and other promotional materials are therefore, not trivial promotions. They can be said to be solemn efforts undertaken by developers with the help of professional advertising agencies to convey a distinct mental image to the prospective purchaser so as to persuade them to make not only a mere booking, but a commitment to purchase by paying the first 10% of the purchase price, which is non-refundable.

So, the next time you look at a developer's brochure, make sure you keep a copy. It may well come in handy should there be a dispute between yourself and the developer. Similarly, in representations made by the sales person who persuaded you to buy one of life's most significant purchases.

**Dato Pretam Singh Darshan Singh** is a lawyer by profession. Previously a senior federal councillor with the attorney general's chambers, a legal advisor and deputy public prosecutor, as well as president of the Tribunal for Home Buyers' Claims. He is now partner in a legal firm and legal advisor to a host of government departments and agencies. His years of experience and knowledge have seen him deliver presentations, talks and lectures besides contributing articles towards local dailies, journals and periodic publications.



- accessory parcels [included in the purchase price] is clearly indicated in the advertisement.)
- (f) the name of the housing development, if any;
- (g) the expected date of completion of the proposed housing development;
- (h) the selling price of the housing accommodation;
- (h-i) where applicable, the minimum and maximum selling price of each type of housing accommodation;
- (i) the number of units of each type available; and
- (j) the name of the "Appropriate Authority" approving the building plans and the reference number. (This gives purchasers a chance to obtain a copy from the local authority, if the need arises.)

Under Regulation 5 of the Housing Development (Control and Licensing) Regulations 1989, any advertisement and sale material that is used to make the sale, must first be submitted in its final content and form - including all disclaimers - for approval by the Controller. Should there be any changes or deviations from the first proposed materials, these should be approved by the Controller as well or they would

the Consumer Protection Act 1999, they are unlawful.

Taking cognisance of the growing concern pertaining to unfair contract terms, Parliament felt it necessary to intervene in protecting consumers/purchasers from such terms. Instead of enacting a wholly new statute, Parliament amended the existing one, as a result of which a new part has been inserted into the existing Act 599, namely Part IIIA intitled Unfair Contract Terms. Pursuant to the Consumer Protection (Amendment) Act 2010, provisions on unfair contract terms in a consumer's standard form contract were introduced, which will apply to any contract entered into after the enforcement of the Act. The amendment was gazetted on Feb 1, 2011.

THE INTENTIONS OF HAVING THESE AMENDMENTS WERE:

- ▶ a) to give better protection to consumers in situations where unequal bargaining powers between consumers and suppliers exist, which leaves consumers with no option except to abide by the unfair terms; and
- ▶ b) to prevent suppliers from imposing unfair terms in any

Sometimes you will find a beautiful girl sitting under a canopy on a deck chair next to a pool. Well, the developer does not have to provide the beauty but certainly the deck chair, pool and the canopy have to be provided.

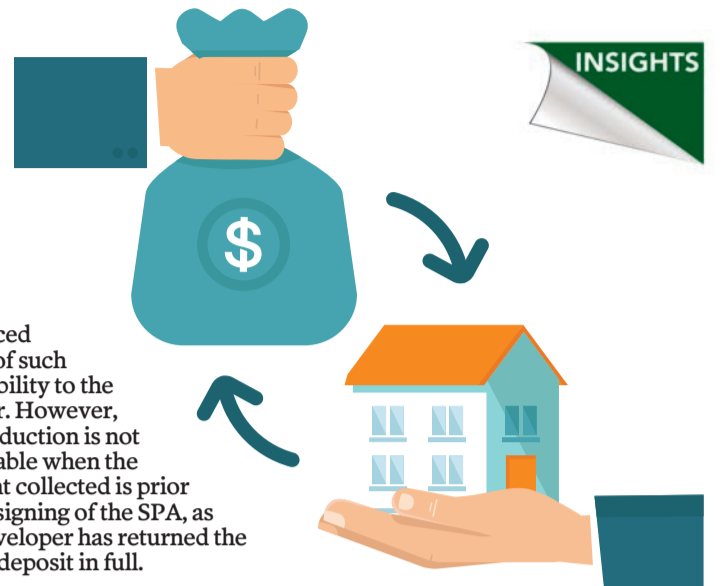
CASE STUDIES

- ▶ A) In Cheong Bee Yong v MBF Finance Bhd & Anor [2001] 1 CLJ 668, the Court held that: "From the way the brochure was worded, it must be regarded as an undertaking by the developer to pay whatever expenses that arose before the issuance of the CF. The Plaintiffs purchased the condominium unit on the strength of such an undertaking."
- ▶ B) In Ammer Ali Mohamad Yusoff & Anor v Sunrise Bhd [2008] 1 LNS "The brochure and folder of promotional materials used ... and produced before the court, are luxuriously produced material and not in the nature of the usual sales flyers. The promotional materials are not trivial promotional materials but are a solemn effort to convey a distinct mental image to the prospective buyer to

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# Plot and practice on deposits

> Collection of deposit by developers prohibited by law



INSIGHTS



**LEGAL INPUT**  
BY DATO' PRETAM SINGH DARSHAN SINGH

It is common practice when one buys a ready-made house, to pay a deposit before signing a sale and purchase agreement (SPA). However, in the case of houses sold by developers (sell-then-build), the developers do not have the luxury of collecting a deposit before the signing of the SPA. Collecting a deposit was, in actual fact, allowed years ago, before 1989, but legislature had to intervene and prohibit this activity of developers when some unscrupulous ones ran off with the deposits collected from potential house purchasers.

This new law prohibiting the collection of deposits came in the form of the Housing Development (Control and Licensing) Regulation 1989. A special provision was added, making it an offence for any housing developer to collect any payment, by whatever name called, such as - deposit, option to purchase, advance, stakeholder sum - except when the purchaser has first signed the SPA. Failure to comply with this provision was made a criminal offence with a fine not exceeding RM20,000 or a term of imprisonment not exceeding five years or both.

**POINT 1**

All deposits collected by developers, unlawfully, have to be returned in full, without any deductions since the developer is the party in breach of the law. By his collection of money contrary to law, he is precluded from pursuing his case by relying on his own illegal act: *ex turpi causa non oritur actio*. (An action does not arise from a bad cause, see: Latin for Lawyers.) This clear and well recognised legal maxim is founded in good sense. No court will enforce an illegal contract or allow itself to be made the instrument of enforcing obligations arising from a contract or transaction which is illegal.

**The duty to observe the law is firmly placed in the hands of developers** as illustrated in *Daiman Development Sdn Bhd v Mathew Lui Chin Teck [1981] 1 MLJ 56*, Sir Garfield Barwick further held that: "The duty of observing the law is firmly placed on the housing developers for the protection of house buyers. Hence, any infringement of the law would render the housing developer liable to penalty and conviction".

**POINT 2**

**It is also unlawful for developers to use lawyers as a conduit to assist in collecting unlawful deposit as "stakeholders"**.

It was held in *Wan Ming Sun v Planet Uno Sdn Bhd [2013] 1 LNS 371*

that this was another method by developers to circumvent the mandatory provision of the law.

"The Option Fee is therefore a guise to circumvent the mandatory requirement of regulation 11(2). That being the case, it is amply clear that the Option for Sale is an agreement prohibited by law.

It matters not that the payment was placed with the stakeholder as contended by the counsel for the plaintiff.

Consideration which is forbidden by law is not lawful as provided under s. 24 of the Contracts Act. An agreement with unlawful consideration and whose object is unlawful is void and unenforceable under s. 25 of the Contracts Act."

Malaysian Bar has also advised lawyers vide "Bar Circular No 011/2014 dated 24 Jan 2014" not to collect any deposit on behalf of developers unless they (purchaser) are able and ready to sign the SPA concurrently ... yet I notice that there are lawyers who continue to flout these provisions.

**POINT 3**

If a deposit is paid in concurrent with the signing of the SPA, then pursuant to Clause 5(3) of the SPA, the developer is allowed to deduct 1% of the purchase price as fees, in case the purchaser fails to obtain the loan due to his ineligibility of income and has

produced proof of such ineligibility to the vendor. However, this deduction is not applicable when the amount collected is prior to the signing of the SPA, as the developer has returned the entire deposit in full.

**POINT 4**

Although the collection of deposit is unlawful, courts have held that the developers' obligation to complete the houses commence from the date of deposit and not from the date of the SPA. Referring to:

\* *Faber Union Sdn Bhd v Chew Nyat Shong & Anor [1995] 3 CLJ 797*  
"For the purpose of ascertaining the date of delivery of vacant possession of the relevant date when time starts to run is the date which the purchaser paid the booking fee and not the date of the signing of the SPA."

\* *Lim Eh Fah & ORS v Seri Maju Padu [2002] 4 CLJ 37*  
"The date of July 17, 1992", i.e. the deposit payment date, was the date when the contract was struck, and the very date the respondent assumed responsibility to fulfill its part of the bargain. If the date of signing of the SPA were to be taken as the relevant date when time started to run for the delivery of the vacant possession, the respondent could willy-nilly pick any date it favoured to execute the SPA,

which would certainly prejudice the interest of the purchaser."

The courts have once again shown that developers who are unscrupulous are not rewarded. So keep your deposit receipt as it may come in handy in allowing you, as the purchaser, to have the last laugh.

**Dato Pretam Singh Darshan Singh** is a lawyer by profession. Previously a senior federal councillor with the attorney general's chambers, a legal advisor and deputy public prosecutor, as well as president of the Tribunal for Home Buyers' Claims. He is now partner in a legal firm and legal advisor to a host of government departments and agencies. His years of experience and knowledge have seen him deliver presentations, talks and lectures besides contributing articles towards local dailies, journals and periodic publications.

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## HILIR 37

SG. BURUNG, BALIK PULAU, PENANG

## 31

JANUARY

## OFFICIAL LAUNCH

\*Light Refreshment will be served on 31 Jan 2015

This project offers easy access to the city center via expressway and major roadways. It is also near to the library, police station, hospital, school and etc.

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**T**HE new year is welcomed with cheer and hope with many looking towards a brighter 2015. What better way to start the year than with a brand new look to your interiors. After scouring the design market and speaking to the professionals of this trade, here is a list of what experts predict will be the hottest interior trends for 2015.

# New year, new look

> Interior design trends for 2015

## DINING ROOM

### ► Custom furniture



PHOTO: COTEDETAXAS.COM

“From dining room tables with initials carved into them, to chairs with floral armrests, custom furniture is a must this year,” says interior designer Ben Wong. Your personal interpretation of stylish can be turned into an exceptional statement piece, and the best part is ... it does not have to be expensive. Many designers offer furniture built to design requirements, for about the same price as buying similar pieces readymade from furniture stores.

### ► Metallic leather



PHOTO: NOTONTHEHIGHSTREET.COM

Continuing its popularity from last year, metallic leather furniture is expected to remain highly sought after. For those who really want to make a statement in their dining rooms, consider metallic leather materials with high back chairs. “The use of metallic finishes on leather is not only striking, but blends in with most backgrounds. Additionally, the metallic leather covered pieces are sure to add a bold, dramatic effect that will not go unnoticed,” says Wong.

## LIVING ROOM

### ► Fibre art

In the living room, many designers believe that fibre art will prevail this year instead of expensive wallpaper or fine art. Not only is fibre art a creative, and arty embellishment, it is also a terrific way to dramatically transform a plain looking room for just a fraction of the cost of redecorating. Looking for a more subtle effect? Go for a decorative fibre art cushion or table runner.



PHOTO: SLUMINNS.COM

*“This year more than ever, practicality is key. As living areas have become smaller, people are looking to make rooms more multifunctional and adaptable to various situations. Subsequently, we will also be seeing a higher demand for multifunctional furniture and accessories, which mix both practicality and aesthetics.”*

- Ben Wong.

### ► Gallery wall



PHOTO: HOMEYDESIGN.COM

“The gallery wall trend never really completely vanished. It is actually one of the easiest ways to transform a living room into a stylish, inviting area,” says interior designer Sue-Ling Tan. “Whether you want to use personal photographs or a collection of artwork, the key to getting this look right, is by varying the size of frames with similar style attributes. This will add cohesion and enhance, otherwise straight lines and surfaces.”

## KITCHEN

### ► The home’s social hub

The social kitchen has grown increasingly popular, becoming the heart and soul of the home. Long gone are traditional family kitchens used solely for cooking. Latest kitchen designs cater to this trend, and create fun fixtures to turn the kitchen into an enjoyable area where the whole family can interact in. “It is easy to use your creativity and make the kitchen one of the most comfortable and trendy areas in the home. Try attaching a neon breakfast nook or even island seating,” says Tan.

### ► Boldly grey

“With many attributing the colour white with cleanliness, white kitchens have been trending for the past few years. However, for 2015, the hue in favour appears to be the colour grey,” says Wong. Those who feel

overwhelmed by a predominantly grey room can consider using the colour sparingly to certain aspects like kitchen counters or the sink. The rest of the kitchen can be finished in cool neutrals. “The amount of grey one uses in the kitchen will determine whether the area has a contemporary look or more of a traditional appearance,” he adds.

## BATHROOM

### ► Spa baths

With our fast-paced lifestyles, more and more people today want a bathroom that allows them to escape and unwind after their long and busy days. “Spa-inspired bathrooms will continue to be one of the most sought-after interior décor,” says Wong. From luxurious finishes to opulent water features, the focus is all on providing a gorgeous, relaxing environment.

### ► Nature inspired



PHOTO: STUPIC.COM

“Environmentally-friendly bathroom designs are very popular and will continue to be throughout 2015,” says Tan. “Many of the designs include neutral hues such as beige, brown, green and blue,” she adds. Nature-inspired materials such as bamboo will also be popular, bringing in much needed contrasts in textures, and cozying up the cold look of the room.

## COLOUR OF THE YEAR

Dulux’s colour of 2015, copper blush, is a soft pinky orange shade, ideal for kitchens and dining rooms. Adds charm when used in tableware, appliances and table cloths.



PHOTO: MADABOUTTHEHOUSE.COM

Pantone’s colour of the year, marsala, will add warmth to a room. This earthy red brown colour is perfect for living rooms and bedrooms.



PHOTO: LAMPSPUS.COM

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