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RISKS DURING THE DEVELOPER’S MANAGEMENT PERIOD FOR STRATA RESIDENTIAL PROPERTY IN MALAYSIA

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Abstract

The property developer would be in a vital role to orchestrate the development and ensure the issuance of the strata title. Developer’s Management Period will take place right after the property completion if the strata title has not been issued during the delivery of vacant possession to the parcel owners. Concentrating on the property developer during the Developer’s Management Period, this study aimed to investigate the risks associated with the management of strata-titled properties as a strategy to further understand the needs of managing the property from the earliest stage. This study was adopting the analytical review of the literature, content analysis of the documents and thematic analysis from the semi-structured interviews with the industry players. This study has identified the employees’ competencies, financial liquidity, non-compliance to the laws, litigation, customer service and security management as six risk factors that the developers must be concerned about in managing strata-titled properties. Afterwards, developers may continue to do risk assessments and risk mitigation as parts of the risk management process.

Keywords: Developer’s Management Period, Strata Residential Property, Property Developer, Property Management Risks, Malaysia

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INTRODUCTION

In 2020, the urbanization rate in Malaysia reached 77.6% and would reach up to 80% in 2030 (Ministry of Housing and Local Government, 2022). It was about 25.7 million of the Malaysian population in the year 2020 lived in cities and urban areas. In meeting the urbanization needs, strata-titled developments have become part of the answers to accommodate the growing demands from economic activities, escalation of populations and solving the issue of limited spaces in the matured, prime and strategic areas (Tee, 2016).

Strata-titled developments would mostly be in the form of high-rise buildings although there are landed properties under the strata title as options for buyers. Developers are moved to develop vertical developments or high-rise buildings because they have limited development space but still offer good profitability through maximization of development density. Considering that people are getting used to living in vertical development has made the developers compete aggressively in securing strategic locations in the central business district (CBD) and urban areas. To them, product offering must meet what the customers want, because real estate product is exposed to various influencing factors such as location, infrastructure, accessibility, facilities, development concept, product design, competitive pricing, government policies, consumer sentiment, brand, marketing, good building services and efficient property maintenance and management, which the customers would choose according to their preferences (Tee, 2016).

Property developers are aware of the necessity for having good building services and efficient property maintenance and management for collective well-being amongst the occupants as well as preserving the physical and investment value of the property. Many property developers are willing to do property management and stay longer after the development completion mainly to have control of the property and make businesses from it. Records have shown that in 2018, 30% or 6,372 of 21,222 strata-titled residential units and 33% or 7,368 of 22,345 of strata-titled residential units during 2019 in Malaysia were managed by property developers (Cawangan Pengurusan Strata, 2018, 2019). But the strata laws in Malaysia have restricted that by putting the conditions and time frame for the property developer to hand over the management of the property to owners. Property developers are allowed to manage the property only within the Developer's Management Period as specified in the Act.

This study has set its scope to study property management by the property developer within the time frame between property completion and handing over to the Joint Management Body (JMB) or Management Corporation (MC). The aim is to identify the associated property management risks faced by the property developers during the Developer's Management Period. This study was filling the gap of other studies, which mostly studied property management stages after the management handover from the developers.

LITERATURE REVIEW

Strata Management

Strata-titled properties are comprehensively bound by the laws which enforce the related parties to comply with all the requirements accordingly. They are regulated mainly by the Strata Titles Act 1985 (Act 318) and Strata Management Act 2013 (Act 757). Before Act 757, there was the Building and Common Property (Maintenance & Management) Act 2007 (Act 633) (repealed) that regulated proper procedures for the maintenance and management of the strata properties including the formation of Joint Management Body and Management Corporation. Both Act 633 (repealed) and Act 757 have given the power for the appointment of the Commissioner of Building (COB) in every local authority to administer and carry out the act's provisions through monitoring and enforcement. COB carries the power to supervise the developers, Joint Management Bodies, Management Corporations, proprietors, and occupants on practice compliances.

Apart to accommodate the abovementioned main laws, there are Strata Management (Maintenance and Management) Regulations 2015, Strata Management (Strata Management Tribunal) Regulations 2015, and Strata Management (Compounding of Offences) Regulations 2019 to further expand the legislation controls for the practice. Nevertheless, other statutes and regulations such as the Housing Development (Control and Licensing) Act 1966 (Act 118), Valuers, Appraisers, Estate Agents and Property Managers Act 1981 (Act 242), Housing Development (Control & Licensing) Regulations 1989, Malaysian Property Management Standards, just to name a few, are also in place to regulate the practice whether directly or indirectly. The existence of the Strata Management Tribunal is part of the strategies by the government to facilitate strata unit owners to handle disputes regarding strata management. The tribunal can handle cases with a maximum claim of up to RM250,000 has helped the strata residents to get quality living because the tribunal can solve disputes among the strata residents within a shorter period and at a lower cost (Ng, 2018; Tan, 2019).

Part IV of the Strata Management Act 2013 (Act 757) has permitted property developers to take the role of building manager for their newly completed stratified property during the Preliminary Management Period or Developer's Management Period. The period is starting from the delivery of the vacant possession date until the formation of a Joint Management Body (JMB) or Management Corporation (MC) depending on the opening status of a book of the strata register and the presence of a Management Corporation (MC) (Bahari, 2019; Lai, 2016; REHDA Institute, 2018).

Table 1. Statistics for JMB/MC establishment by year in a residential strata-titled development

Year	Total strata-titled development for residential	Total number of JMB/MC establishment	Percentage of JMB/MC establishment
2019	22,345	10,945	48.9%
2018	21,222	9,236	43.5%
2017	20,441	9,142	44.7%
2016	19,923	8,888	44.6%

Source: Cawangan Pengurusan Strata (2016, 2017, 2018, 2019)

As presented in Table 1, the percentage of strata-titled residential properties under the management of JMB and MC was never getting more than 50%. In 2018 and 2019, there were 6,372 and 7,368 strata units respectively under the management of developers (Cawangan Pengurusan Strata, 2018, 2019). Based on yearly progression, it can be inferred that the strata properties until now are largely under the management of property developers together with the managing agent and other managing bodies. It is inevitable considering that both the government and private sector are supplying strata properties to support various national housing programmes, especially to accommodate the demands of low and medium-income groups (Ministry of Housing and Local Government, 2022). So, this paper would like to emphasize that Developer's Management Period is crucial because the number of property developers who still managing the properties is high and considering the long extent of their availability in managing the property.

Developer's Management Period

Clause 12, 25, 27 and 28 of the Schedule H of Housing Development (Control and Licensing) Regulations 1989 have stipulated that the developer is responsible to apply for building or land subdivision together with separate strata titles and delivering the issued strata titles during the delivery of vacant possession to the purchasers. Nevertheless, an exception is given to the developer if the issuance of strata titles to the said parcel is late or not issued due to certain conditions which not attributable to the developer but must be accompanied by a written certificate by the Controller to deliver the vacant possession within 36 months from the date of Sale and Purchase Agreement.

In congruence with Schedule H, Figure 3 has illustrated the Part IV and V of the Strata Management Act 2013 (Act 757) on two situations or processes of strata management whether strata titles have been issued or not during the delivery of vacant possession to the purchasers. The first situation is where the developer has delivered vacant possession of the parcels in the development to the purchasers after the issuance of strata titles, which initiates the Preliminary Period because the Management Corporation (MC) is reckoned as being

established. But until the 1st Annual General Meeting (AGM) of MC is conducted to elect the management committee, the developer will manage the property (HBA, 2019). There is a condition that the 1st AGM of the MC can only be arranged after 25% of the aggregate share units of the development area in the respective strata titles have been duly registered in the interest of the parcel owners (Rabe *et al.*, 2021; Tan, 2019).

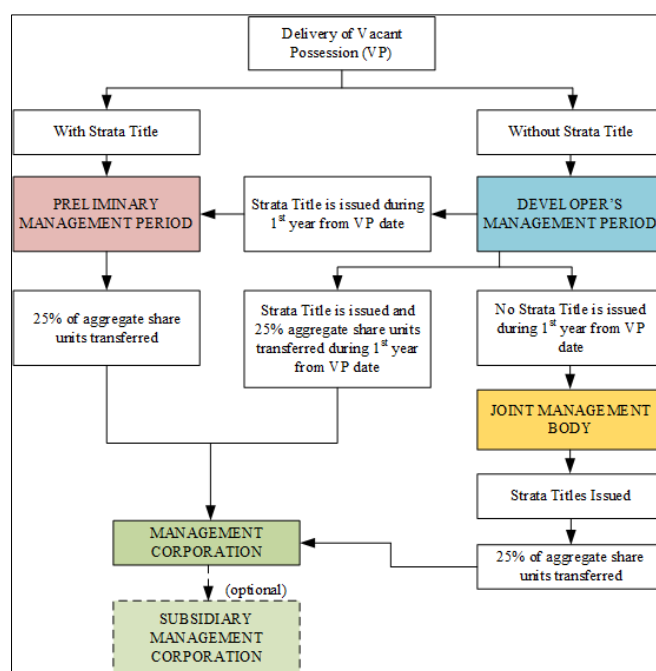


Figure 3. The flow of Management Corporation Formation for Strata-Titled Property
Source: REHDA Institute (2018)

The second situation is illustrating the Developer's Management Period where the developer has delivered vacant possession of the parcels in the development to the purchasers before the issuance of strata titles (Tan, 2019). As shown in Figure 4, the developer is allowed to manage the property for a maximum period of 12 months from the delivery of the first vacant possession of the units. The developer must call for the First Annual General Meeting of JMB within those 12 months and need to hand over the property within one month after the meeting (REHDA Institute, 2018).

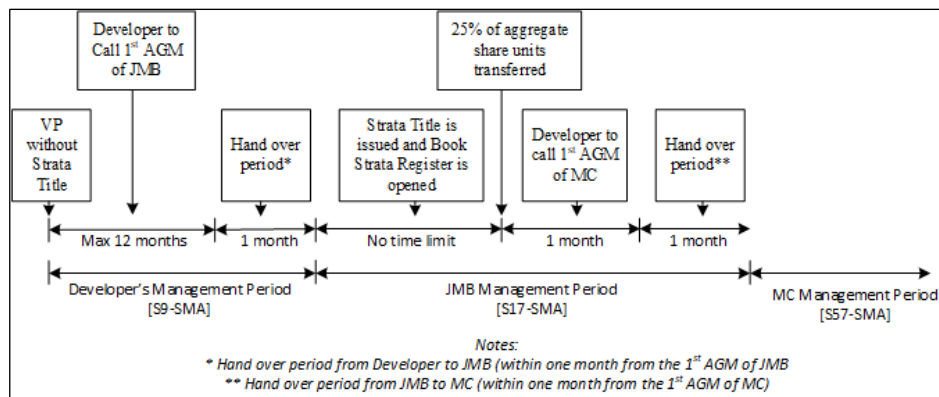


Figure 4. The timeline for the formation of a Management Corporation in Strata-Titled Property

Source: REHDA Institute (2018)

During the Developer's Management Period, the property developer is carrying big responsibility in setting up the property management structure for the property before the handover process. According to Section 9(2) of the Strata Management Act 2013, developers are responsible to manage and maintain the property, determine charges and sinking fund, insure the property adequately, comply with the regulations and orders from the local authority, preparing and maintaining a register of all parcels, maintain and audit the accounts, enforce by-laws, and do such things as may be expedient or necessary for the proper maintenance and management of the building and land (Strata Management Act 2013 (Act 757). Section 9(3) of the act also gives the developers the power to impose charges and sinking funds as maintenance collections, authorize the expenditures necessary for management and maintenance, recover any necessary expenditures from the parcel owners and do any necessary things to perform their duties according to the act.

The is holding huge liabilities during the Developer's Management Period because stated in Section 9(5) and Section 10(7) of Act 757, if the developers fail to comply with provisions of the act or commit an offence, on conviction, will liable to a fine not exceeding two hundred and fifty thousand ringgit and imprisonment for a term not exceeding three years or both (Strata Management Act 2013 (Act 757).

Although the Developer's Management Period should be only for twelve months with a property hand-over period of an additional one month, the property developer is exposed to numerous risks. It is because the developer is an entity that is subject to the laws, which may sue and be sued in its name. There are risks for the property developer while executing its duties to manage the property. Hence, the developer must manage any risks relating to the property and its organisation as well. Knowing the risks would prepare the developer with

the mitigation plans to ensure quality service to strata residents, retain the investment value of the property and protect the developer's interests.

Risks in Property Management

Property can serve multiple intentions because it holds rights, protects the interests and produces benefits. People usually link the property with the investment values which could provide varying returns on average between 4% and 8% depending on various market factors (Chai, 2021). But aside from monetary values, people would also invest in life quality by occupying comfortable properties. So, people would hope for the property manager to provide excellent property management services.

Considering the environment of newly completed strata property, which is still under the Developer's Management Period, this paper has identified the following risks that possibly affect the operation of strata management by the property developers.

Employees' Competencies

Inevitably, the business environment is currently facing a riskier operating environment due to globalization, technology and competition (Azreen Roslan *et al.*, 2017). Thus, requiring competent people to involve in property management services because demand for management and technical skills to deliver the service. The drop in employees' performance level becomes a risk for the organisation when they are affected by multiple factors originating from their working place (Kamarulzaman *et al.*, 2011). Overhauling of the working environment and correction actions by way of supervision, competency training, skill upgrading and development as well as employee engagement programs would be part of the solutions (Mohd *et al.*, 2020; Sabir Ahmad *et al.*, 2021).

Liquidity

Liquidity is referring to the ratio between assets and liabilities owned by an organisation (Nur Hazimah Amran & Wahida Ahmad, 2017). In property management, financial liquidity would be an issue when the property manager does not have enough collections to meet the expenditures due to a shortage of collections or revenues, big cash outflows, long outstanding receivables and low returns on equity. Poor collection of service charges and the sinking fund would always be the main reason for liquidity issues for strata properties (Mohd Tawil *et al.*, 2012). It is eminent that the liquidity risk could be higher for the newly completed strata properties due to the mismatches between forecasted cash flow and actual cash flow due to inaccurate budgeting, unforeseen expenditures and the low number of occupants to pay the service charges during the early stages.

Non-Compliance with the Laws

Non-compliance to the law might happen in managing strata properties because there are so many regulations to comply with. Inexperienced developers may be facing difficulties to be well-versed with every law relating to strata management. Non-compliance usually originates from the failure of instilling good governance, irresponsible parcel owners' behaviour, vandalism, damages, housing features, environment and changes in technology or standard specifications (Azmi *et al.*, 2021; Rabe *et al.*, 2021; Shuhaimi *et al.*, 2022). The situation will give impact people's confidence and comfort to live in the property. In the worst situation, the developer is possibly facing legal charges because some of the rules are mandatory and would punish the offenders.

Litigation

Any COBs in the country are regularly receiving complaints from the parcel owners, developers, JMBs and MCs regarding the conduct of meetings and elections, administration matters, offences and many others (Cawangan Pengurusan Strata, 2019). COBs are also received many complaints about the misconduct by developers who manage the property. Although it can be argued that litigations involving the developer are increasing in parallel with the increased number of strata-titled properties (Christudason, 2007), the introduction of the Strata Management (Compounding of Offences) Regulations 2019 has shown the seriousness to do enforcement of strata management. Developers or any management body must fulfil the duties accordingly with good governance.

Customer Service

Without a doubt, property management is very much service oriented where the service provider must ensure clients' satisfaction. Excellent customer service will increase the reputation of the service provider and obtain loyalty from the customer (Andrew *et al.*, 2021). So, addressing all the issues in the strata property such as the complaints, damages and inadequate facilities would increase the residents' satisfaction (Rabe *et al.*, 2021). This area might pose some challenges to the developer to address the issues and handle them well. Especially when the developer has a wrong attitude about their short stint of existence in the property.

Security Management

Security is part of managing people's well-being and quality of life (Azmi *et al.*, 2021). It gives assurance to make the environment in the property safe, thus would make people comfortable and trust. Implementation of good security management will promote good physical health, psychology, and wealth (Muhammad Azib & Farah Safura, 2022). Property developers must ensure the safety of the property by employing proper security guidelines and procedures.

METHODOLOGY

This study was adopting a qualitative approach in its research design. It was mainly using documents and semi-structured interviews to retrieve the information. From the documents and interviews, this study then adopted content analysis and thematic analysis to analyse the information. Reference to the documents has been made by inspecting relevant statutes and published documents from the authorities. The literature has helped the study to identify six related risk factors, which are fundamental to designing the interview questions. Two informants were interviewed after being satisfied with their backgrounds. During the interviews, both informants were still working with property developers and have relevant experience of more than 10 years in managing properties and were involved in setting up the property management for newly completed strata properties during the Developer’s Management Period.

FINDINGS

Information from both of the informants is presented in Table 2. It presents the risks that the developers would face in managing strata properties during the Developer’s Management Period together with their root causes. It confirms the risks identified in the literature and strengthens the discussions.

Table 2: Findings from the Interviews

Risks	Informant A	Informant B
Employees’ Competencies	<ul style="list-style-type: none"> • Company growth was not in tandem with the workforce capacity & skill set. • The performance appraisal system was contrary to the operational needs. • Weak integration between internal learning and career development programmes. 	<ul style="list-style-type: none"> • Ineffective training modules • Lack of continuous structured training • Ineffective internal knowledge transfer, sharing, coaching and handover. • The lackadaisical attitude among staff. • Flaws in standard operating procedures (“SOP”) for property management
Liquidity	<ul style="list-style-type: none"> • Outstanding service charge and sinking fund 	<ul style="list-style-type: none"> • Ineffective budgetary control due to staffing issues and documentation. • Ineffective supervision and credit monitoring procedures
Non-Compliance with the Laws	<ul style="list-style-type: none"> • Inadequate knowledge and awareness of regulatory and statutory provisions. • Lack of compliance status 	<ul style="list-style-type: none"> • Incomplete and inaccurate disclosure of information to the regulatory bodies. • Errors in documents before

	monitoring. <ul style="list-style-type: none"> Internal process weaknesses among departments in compilation and reporting to the regulatory bodies. 	submission to regulatory bodies or agencies.
Litigation	<ul style="list-style-type: none"> Delay in delivery of vacant possession to the purchasers resulting in dissatisfaction. Unresolved disputes and delay in handling issues highlighted by the external party. Breaching of the contract due to contract administration weaknesses and misunderstanding of the critical contract terms. 	<ul style="list-style-type: none"> Authorization issue in contract execution. Lack of integrity Non-payment issue due to creditor's credit terms. Failure to diligently / meticulously vet through documents before submission to regulatory bodies/agencies.
Customer Service	<ul style="list-style-type: none"> Delays in handling customers' complaints or queries. 	<ul style="list-style-type: none"> Analysis and investigation were not performed timely on customer complaints due to insufficient resources. Misinformation and lack of concern by the staff. Poor defect rectification and delay in defect remedial works.
Security Management	<ul style="list-style-type: none"> Lack of skills, guidelines and SOP in security management Insufficient surveillance system Weaknesses in security management 	<ul style="list-style-type: none"> Inadequate physical access controls. Inadequate security patrol Lapses of verification on the security patrolling system.

The findings have revealed the root causes for all the identified risk factors relating to property management for the new strata properties. Both informants pointed out the root causes for each of the risk factors and elaborated on them all. For them, property developers should take the initiatives to identify the risks and find a mitigation plan. It will be a threat for the developers to manage strata properties without understanding the risks that they are facing. So knowing the risks and preparing the action plans would save the property developers and building occupants in unfavourable situations. Also, property developers should be more cautious about the regulations and requirements set by regulatory bodies and agencies. The informants agreed that most of the risks are internal, but need a proper strategy to address and mitigate them. Developer's Management Period

is a critical phase for the property developer to fully completed their development project, so it must be taken highly.

CONCLUSION

Developer's Management Period demands commitments from the property developers to carefully plan and execute the property management set-up for the property. The process is tedious and quite risk-taking because so many decisions and works need to do. A smooth transition from property developer to JMB and MC can only happen when all the processes and procedures were carefully followed and good work coordination between the stakeholders.

This study has successfully identified six risk factors that developers should look into in managing strata-titled properties. The risks of employees' competencies, financial liquidity, non-compliance to the laws, litigation, customer service and security management must be seen as crucial to safeguard the interest of the parcel owners and the property developer itself.

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