Chang Mei Wah Selena and Others v Wiener Robert Lorenz and Others and Other Matters [2008] SGHC 97

Case Number : OS 86/2008, 88/2008, 95/2008, 192/2008

Decision Date : 25 June 2008

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : David Lim Hong Kan (Lim & Bangras) for the plaintiffs in OS 86/2008; Denis Tan (Toh Tan LLP) for the plaintiffs in OS 88/2008; Michael Hwang SC, Yeo Chuan Tat, Fong Lee Cheng (Michael Hwang) (instructed) and Richard Tan Seng Chew, Diana Xie (Tan Chin Hoe & Co) for the plaintiffs in OS 95/2008; N Sreenivasan and Valerie Ang (Straits Law Practice LLC) for the plaintiffs in OS 192/2008; Andre Yeap SC, Dawn Tan Ly-Ru, Danny Ong and Dominic Chan (Rajah & Tann LLP) for the intervener; Quek Mong Hua and Julian Tay Wei Loong (Lee & Lee) for the defendant

Parties : Chang Mei Wah Selena; Khew Sin Wui Alan; Anbu Ganesh s/o Kanapathy; Sant Kaur d/o Nand Singh; Jong Yock Kee @ Tan Yock Kee; Saw Yew Hock; Abdullah Bin Mohamed Yusoff; Pauzimah Binte Hashim — Wiener Robert Lorenz; Ng Seng Kee; Ragunath Guha Ramanathan

Land – Strata titles – Collective sales – Appeal to High Court against Strata Titles Board's approval of en bloc sale of privatised ex-HUDC estate – Property hike after sale – Subsidiary proprietor held shares in purchaser company – Effect of privatisation of HUDC estates – Whether s 84A(1) Land Titles (Strata) Act (Cap 158, 1999 Rev Ed) applied to privatised ex-HUDC estate – Whether s 84A(1)(a) or s 84A(1)(b) Land Titles (Strata) Act (Cap 158, 1999 Rev Ed) applied – Whether collective sale agreement still valid at time of application to Board – Whether transaction made in good faith – Whether Board breached rules of natural justice – Sections 84A(1)(a) and 84A(1)(b) Land Titles (Strata) Act (Cap 158, 1999 Rev Ed)

Statutory Interpretation – Construction of statute – Purposive approach – Appeal to High Court against Strata Titles Board's approval of en bloc sale of privatised ex-HUDC estate – Significance of reference to temporary occupation permit ("TOP") and certificate of statutory completion ("CSC") in ss 84A(1)(a) and 84A(1)(b) Land Titles (Strata) Act (Cap 158, 1999 Rev Ed) – Meaning of TOP and CSC in ss 84A(1)(a) and 84A(1)(b) Land Titles (Strata) Act (Cap 158, 1999 Rev Ed) – Whether s 84A(1) Land Titles (Strata) Act (Cap 158, 1999 Rev Ed) applied to privatised ex-HUDC estate – Sections 84A(1)(a) and 84A(1)(b) Land Titles (Strata) Act (Cap 158, 1999 Rev Ed)

25 June 2008 Judgment reserved.

Choo Han Teck J:

1 On 21 December 2007, the Strata Titles Board ("the Board") approved the collective sale of Gillman Heights Condominium ("the Development") to Ankerite Pte Ltd ("the Purchaser") at the price of $548m. The plaintiffs ("the appellants") were the minority subsidiary proprietors of the Development who objected to the collective sale and filed the present appeals (Originating Summons ("OS") Nos 86, 88 and 95 of 2008) against the decision of the Board (STB No 53 of 2007). The defendants named in OS Nos 86, 88 and 95 ("the respondents") were members of the Sales Committee of the Development who had filed the application to the Board ("the Application") for a collective sale order on behalf of the consenting subsidiary proprietors ("CSPs"). A separate application (OS No 192 of 2008) was also taken up by four sets of CSPs, who had signed the Collective Sale Agreement ("CSA") but not the Supplemental Collective Sale Agreement ("SCSA") (which sought to extend the validity of the CSA), for, *inter alia*, a declaration that the CSA was not validly extended and that the Board had no jurisdiction to approve the collective sale, given that there was no valid CSA at the time of the Application. The Purchaser was granted leave to intervene in the four OS ("the appeals").

2 At the hearing of the appeals, the appellants (represented by different sets of counsel) as well as the applicants in OS No 192 took a collective stance and adopted each other's arguments. Their combined arguments and grounds of appeal can be found in the written submissions of Mr Michael Hwang SC, counsel for the appellants in OS No 95, and the grounds are as follows:

(a) The Board erred in law in granting the collective sale order, as s 84A(1) of the Land Titles (Strata) Act (Cap 158, 1999 Rev Ed) ("the LTSA") did not apply to the Development since it is an ex-HUDC Estate;

(b) Even if s 84A(1) of the LTSA applied to the Development, the Board erred in law in allowing the collective sale order, as the respondents had not obtained the agreement of subsidiary proprietors ("SPs") having no less than 90% of the share values required under s 84A(1)(a) of the LTSA;

(c) Even if the applicable section was s 84A(1)(b) of the LTSA and not s 84A(1)(a) of the LTSA, the Board erred in law in granting the collective sale order as the respondents had not obtained the agreement of SPs having no less than 80% of the share values;

(d) The Board erred in law in granting the collective sale order when there was no valid CSA at the time of the application for collective sale by the respondents;

(e) The Board erred in law in granting the collective sale order when the application by the respondents did not comply with paras 1(b) and 4(b)(iii) of the Schedule of the LTSA;

(f) The Board erred in law in granting the collective sale order when the transaction was not in good faith, having regard to the sale price, contrary to s 84A(9)(a)(i) of the LTSA;

(g) Alternatively, new facts had arisen after the Board's decision concerning the relationship of the majority (National University of Singapore ("NUS")) with the Purchaser which the respondents had not disclosed to the Board. The Board was thus unable to make a fully informed judgment as to whether the transaction was in good faith in accordance with s 84A(9)(a)(iii) of the LTSA; and

(h) The Board had committed a breach of natural justice by not removing Mr Michael Ng ("Mr Ng") from the Board, as Mr Ng had failed to declare that his company, Savills (Singapore), was working with solicitors for the respondents on various en-bloc sale projects.

There is considerable overlap in the grounds above.

3 The first issue before me concerned the question whether s 84A(1) applied to privatised HUDC estates. The relevant version of s 84A(1) of the LTSA was the version prior to the amendments to the LTSA in 2007 ("the relevant s 84A(1)"), which states as follows:

84A. —(1) An application to a Board for an order for the sale of all the lots and common property in a strata title plan may be made by —

(a) the subsidiary proprietors of the lots with not less than 90% of the share values and where less than 10 years have passed since the date of the issue of the latest Temporary Occupation Permit on completion of any building comprised in the strata title plan or, if no Temporary Occupation Permit was issued, the date of the issue of the latest Certificate of Statutory Completion for any building comprised in the strata title plan, whichever is the later; or

(b) the subsidiary proprietors of the lots with not less than 80% of the share values where 10 years or more have passed since the date of the issue of the latest Temporary Occupation Permit on completion of any building comprised in the strata title plan or, if no Temporary Occupation Permit was issued, the date of the issue of the latest Certificate of Statutory Completion for any building comprised in the strata title plan, whichever is the later,

who have agreed in writing to sell all the lots and common property in the strata title plan to a purchaser under a sale and purchase agreement which specifies the proposed method of distributing the sale proceeds to all the subsidiary proprietors (whether in cash or kind or both), subject to an order being made under subsection (6) or (7).

4 The appellants submitted that s 84A(1) uses the time from the date of the latest Temporary Occupation Permit ("TOP") or if no TOP was issued, the date of the latest Certificate of Statutory Completion ("CSC") for the purposes of calculating majority consent in a collective sale. Privatised HUDC estates (such as the Development), however, do not have TOPs or CSCs as HUDC estates are exempted from the requirements of the Building Control Act (Cap 29, 1999 Rev Ed). In the case of the Development, it was exempted from the operation of s 5 of the Building Control Act 1973 and the regulations under the Building Control (Order) 1984 and should have a Certificate of Fitness instead, although it appears that the Development does not have this certificate either. The appellants argued that Parliament must be presumed to have known of the exemption of TOPs and CSCs for HUDC estates when it enacted s 84A(1) in 1999 and it must have been Parliament's intention not to have en-bloc sale legislation apply to privatised HUDC estates. The appellants argued further that the draftsman of the LTSA has adopted an "inclusive approach" in drafting Part VA of the LTSA (concerning collective sales) in that specific sections (*ie*, ss 84A to 84G) were provided to apply to different and specific types of estates. The appellants further submitted that this view was strengthened by the 2007 amendments to the LTSA. The new ss 126A(6A) and 126A(6B) now specifically provide that in respect of privatised HUDC estates, any reference to the date of the issue of the CSC in the application of ss 84A(1)(a) or 84A(1)(b) shall be read as a reference to the date of completion of the construction of the last building (not being any common property) in the strata title plan:

(6A) Subject to subsection (6B), in the application of section 84A(1)(*a*) or (*b*) to any designated land, any reference therein to the date of the issue of the latest Certificate of Statutory Completion for any building (not being any common property) comprised in the strata title plan shall be read as a reference to the date of completion of the construction of the last building (not being any common property) comprised in the strata title plan as certified by the relevant authority.

(6B) In the application of section 84A(1)(*a*) or (*b*) to any designated land specified in the First Schedule to the HUDC Housing Estates Act (Cap. 131), any reference therein to the date of the issue of the latest Certificate of Statutory Completion for any building (not being any common property) comprised in the strata title plan shall be read as a reference to the date of the issue of the Certificate of Fitness for any building (not being any common property) comprised in the strata title plan.

5 According to the appellants, the enactment of ss 126A(6A) and 126A(6B) showed that privatised HUDC estates were deliberately excluded when s 84A(1) was enacted in 1999, and the recent enactment of these two sub-sections was to change the existing law. This change in law, counsel submitted, was in line with the recent practice of the government to allow the topping up of leases for leasehold estates (especially privatised HUDC estates, given that such estates have only a

maximum 99-year lease) and to include privatised HUDC estates in the en-bloc pool due to increased demand for land. The appellants further submitted that even if Parliament had not intentionally excluded privatised HUDC estates from en-bloc sales in 1999, but had done so due to an oversight, this was, nevertheless, not an omission which could be corrected by the courts.

6 Counsel for the respondents and the Purchaser submitted that pursuant to s 9A of the Interpretation Act (Cap 1, 2002 Rev Ed), a purposive interpretation should be taken of s 84A(1) of the LTSA, and such a purposive interpretation would serve the true purpose and spirit of the legislation. Mr Andre Yeap SC ("Mr Yeap"), counsel for the Purchaser, pointed out that the Board and the High Court had on a previous occasion made orders for the collective sale of one privatised HUDC estate, namely in the estate known as Waterfront View. In the case of Waterfront View, an argument was made, briefly, by the appellants there that Parliament could not have intended a privatised HUDC estate to be subjected to a collective sale. That argument was dismissed by Belinda Ang Saw Ean J (*Yeo Loo Keng and Another v Tan Yew Lee Kevin and Others* [2007] 3 SLR 455 ("*Yeo Loo Keng*") at [38]):

> *Mr Leong had contended that Parliament could not have intended for HUDC properties to be involved in, and the corresponding CPF housing scheme regulations (as set out below) to have any application to, a collective sale of property. That assertion is factually incomplete as it disregarded privatisation of the property in 2002. It had also sought to make a distinction that was fanciful*. This is because the CPF housing scheme regulations applicable to privately-owned properties in relation to this issue have a similar structure and framework as those that govern HUDC properties. [emphasis added]

7 The issue of whether privatised HUDC estates are subjected to en-bloc sale (prior to the 2007 amendments to the LTSA) was not one of the main issues raised before the High Court in *Yeo Loo Keng*, and was only raised as a side argument to one of the issues. It seems to me that *Yeo Loo Keng* cannot reliably support the proposition that s 84A(1) does not apply to privatised HUDC estates.

8 Section 84A(1) was first enacted in 1999 pursuant to the Land (Titles) Strata (Amendment) Act (Act 21 of 1999), and the original wording of the proposed section in the Bill was as follows:

> **84A.**—(1) An application to a Board for an order for the sale of all the lots and common property *in a strata title plan with more than 10 lots* may be made by —
>
> (a) the subsidiary proprietors of the lots with not less than 90% of the share values where less than 10 years have passed since the date of the issue of the latest Temporary Occupation Permit on completion of the development or, if no Temporary Occupation Permit was issued, the date of the issue of the latest Certificate of Statutory Completion for any building comprised in the strata title plan, whichever is the later; or
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> (b) the subsidiary proprietors of the lots with not less than 80% of the share values where 10 years or more have passed since the date of the issue of the latest Temporary Occupation Permit on completion of the development or, if no Temporary Occupation Permit was issued, the date of the issue of the latest Certificate of Statutory Completion for any building comprised in the strata title plan, whichever is the later,
>
> who have agreed in writing to sell all the lots and common property in the strata title plan to a purchaser under a sale and purchase agreement which specifies the proposed method of

distributing the sale proceeds to all the subsidiary proprietors, subject to an order being made under subsection (6) or (7).

[emphasis added]

9 The Explanatory Statement to the Land (Titles) Strata (Amendment) Bill (Bill No 28 of 1998) ("the 1998 Bill") stated the purpose of the proposed s 84A as follows:

New section 84A enables owners of 80% or 90% share values *in a strata development with more than 10 units registered under the Act* to apply to a Board after they have entered into a conditional sale and purchase agreement. [emphasis added]

10 At the second reading of the 1998 Bill, the Minister of State for Law, Associate Professor Ho Peng Kee, also explained that (*Parliamentary Debates*, vol 69, cols 605-606 (31/07/98)):

… *the new scheme [for en-bloc sales] will apply to three types of strata developments*: those registered under the Land Titles (Strata) Amendment Act where the owners own their units and share in the common property, which is the vast majority; those not registered under the Land Titles (Strata) Act where the owners own their units and a share in the land but do not have a management corporation framework under the Act; and those not registered under the Land Titles (Strata) Act where the developer still owns the land.

…

I should add that the new scheme will only apply to *strata developments*. It will not apply to landed developments. Strata developments, unlike landed developments, are founded on the concept of community living, shared ownership of common property in designated values, and individual ownership of strata title which is essentially air space. All these distinguishing features of strata developments support the new approach based on majority consent for en-bloc sales.

[emphasis added]

11 Pursuant to the recommendations of the Select Committee, the prohibition against strata developments with 10 or fewer units was removed and the relevant s 84A(1) was enacted (see Report of the Select Committee on the Land Titles (Strata) (Amendment) Bill (Bill No 28/98) ("Select Committee's Report") at p iii). From the Explanatory Statement of the 1998 Bill, the relevant parliamentary debates and the words of the relevant s 84A(1) ("sale of all the lots and common property in a strata title plan"), it seems that Parliament had intended s 84A(1) to apply to *strata developments*.

12 Prior to the enactment of s 84A(1) of the LTSA in 1999, the privatisation of HUDC estates was introduced in 1995 with the enactment of ss 126A and 126B of the LTSA pursuant to the Land (Titles) Strata (Amendment) Act (Act 27 of 1995). Once a HUDC estate is privatised, the HUDC Housing Estates Act (Cap 131, 1985 Rev Ed) no longer applies to the HUDC estate and the body corporate of the HUDC estate constituted under the HUDC Housing Estates Act will continue as a *management corporation* constituted under the LTSA (s 126B(1) of the LTSA):

126B. —(1) Upon the registration of the strata title application in respect of any housing estate built on land to which the HUDC Housing Estates Act (Cap. 131) applies —

(a) the HUDC Housing Estates Act shall cease to apply to the housing estate and to all the

registered proprietors of flats within the housing estate;

(b) *any body corporate constituted under the provisions of the HUDC Housing Estates Act in respect of that land shall continue as a management corporation* constituted under the provisions of this Act having as its corporate name the corporate name as prescribed in this Act (referred to in this section as the new management corporation);

(c) the management committee constituted under the HUDC Housing Estates Act of such body corporate shall, subject to this Act, be the council of the new management corporation, and any person who, immediately before such registration, is a member of the management committee shall be deemed to have been elected under the provisions of this Act as a member of the council of the new management corporation;

(d) all by-laws relating to the land under the provisions of the HUDC Housing Estates Act (Cap. 131) shall cease to have any force or effect in relation to that land but without prejudice to any right or liability accruing or legal proceedings instituted prior to the registration of the strata title application;

(e) any contribution levied by such body corporate under the provisions of the HUDC Housing Estates Act and unpaid on the registration of the strata title application may be recovered by the new management corporation as if it were a contribution levied by the new management corporation under this Act;

(f) any charge constituted upon a flat in favour of such body corporate under the provisions of the HUDC Housing Estates Act in connection with any unpaid contributions shall be deemed to be a charge constituted upon the lot corresponding to that flat in favour of the new management corporation under this Act;

(g) every fund which was, immediately before the registration of the strata title application, kept by such body corporate under the provisions of the HUDC Housing Estates Act, shall be deemed to be a fund required under the corresponding provisions of this Act to be established and maintained by the new management corporation; and

(h) any policy of insurance effected by such body corporate in relation to any building within the housing estate in accordance with the provisions of the HUDC Housing Estates Act and in force on the registration of the strata title application shall continue and deemed to have been effected under this Act, and sections 69 and 70 of the Building Maintenance and Strata Management Act 2004 shall not apply to or in respect of the new management corporation for that housing estate until the expiry of that policy.

[emphasis added]

13 Effectively, a privatised HUDC estate becomes no different from any other private strata developments with a management corporation; as the Minister for National Development, Mr Lim Hng Kiang, said at the second reading of the Land (Titles) Strata (Amendment) Bill (Bill No 22 of 1995) ("the 1995 Bill") (and I quote at length below) (*Parliamentary Debates*, vol 64, cols 1389-1391 (07/07/95)):

The primary objective of the Bill is to amend the Land Titles (Strata) Act to provide the legal framework to enable the conversion of the leases of flats in designated HUDC estates to strata titles.

This conversion will allow HUDC residents to enjoy the status and advantages of private property owners. It is part of the Government's asset enhancement programme. It will also serve to meet the rising aspirations of Singaporeans for private housing.

Upon privatisation, the HUDC owners will have ownership of their respective strata units and own, as tenants-in-common, the common property such as car parks, open landscaped areas and common parts within the buildings.

This will enable them collectively to upgrade their estates to a standard comparable to private residential estates. *The residents will be able to enjoy the status and privileges of private residential owners without having to uproot themselves and move elsewhere*.

At the same time, *the privatised estates will no longer come under HDB rules and regulations. They will be like any other private property, subject only to the Residential Property Act*. Thus, for example, if the building is at least six storeys high, the flats can be sold to foreigners.

The passage of this Bill does not imply automatic privatisation. This Bill is only an enabling legislation.

HDB, as the landlord, will progressively identify which estates are ready for conversion. But it would then be up to the HUDC lessees themselves to obtain at least 75% support for the conversion.

The Government has decided to set this 75% support requirement because the conversion process will entail costs to the lessees. It would thus be fair that a significant majority agree to bear these costs before the conversion can proceed.

The process of legal transfer of title from HDB to HUDC lessees will take up to one and a half years as time is needed for the preparation of strata title survey plans and also the physical conversion works needed to bring the blocks up to the latest standard for the award of strata titles.

Let me now turn to conversion costs. The lessees of HUDC Phase III or IV HUDC estates will have to pay for the conversion costs of around $25,000 each. This sum includes $20,000 for a carpark lot. The lessees should note that this upfront purchase of their car park lots, for which they can now use their CPF funds, will save them from having to pay parking charges over the rest of their lease. Other conversion costs include legal and survey fees, and also construction costs to meet prevailing barrier-free requirements of strata-titled properties. Lessees of HUDC Phases I and II flats will not need to incur the car park cost as they already have a share of the car parks and common areas.

After the conversion, the residents can form management corporations to manage and maintain their estates. The management corporations can carry out improvements without having to seek HDB's consent. They can also build additional facilities, if they desire to do so.

The town councils will work out the portion of their sinking funds which are attributable to the HUDC estates and transfer the amount to the management corporations of the HUDC estates to be converted.

Sir, a pilot project is needed to test the full complexity of the scheme and iron out any problems which may arise. We have thus chosen two Phase III HUDC estates - Pine Grove and Gillman

Heights - for the pilot project. If successful, the Government will extend the conversion scheme to other HUDC estates batch by batch.

[emphasis added]

14 Given that the privatisation of HUDC estates was introduced in 1995 (the Development was one of the first few HUDC estates that took part in the pilot (conversion) project), that the privatised HUDC estate becomes no different from any other private strata developments with a management corporation constituted under the LTSA, and the subsequent enactment in 1999 of s 84A(1) applying to strata developments, I am of the view that Parliament did not intend to exclude privatised HUDC estates from the application of s 84A(1) and from en-bloc sales. It remains now to consider the significance of the TOP and CSC in the context of s 84A(1).

15 The relevant parliamentary debates show that Parliament had intended to peg the requisite majority consent needed for a collective sale (80% or 90%) with the *age of the estate/development*. At the second reading of the 1998 Bill (which introduced s 84A(1)), Associate Professor Ho Peng Kee said at the start of the reading of the bill (*Parliamentary Debates*, vol 69, cols 601-602 (31/07/98)):

> Firstly, Government will not decide which developments are ready or ripe for en-bloc redevelopment. The owners will decide that for themselves. There are too many factors at play, such as the *age* and state of repairs of the development, market conditions, sentiments of the owners and the relationship amongst them. *As announced previously, what the Bill will do is peg the required majority consent to the development's age* - the majority owners must account for at least 90% of the share values for developments less than 10 years old, and 80% for developments 10 years or more. This approach will facilitate the redevelopment of older buildings. It is also in line with the approach in other countries - Nova Scotia, New Brunswick and Ontario in Canada (80%); British Columbia, Canada (75%); Hawaii (80%) and Hong Kong (90%, but where the law also provides that the Chief Executive in Council may specify a lower percentage not less than 80% in certain circumstances). A higher percentage is not practical, a lower percentage not appropriate given the importance of the matter.
>
> The current requirement of unanimous consent is untenable. The case of Kim Lin Mansions which was recently highlighted in the press brings this out clearly. Community living, which is the heart of living in a condominium, all but disappears when owners have to drag out their disagreement in court, incurring huge financial outlays in the process. There is uncertainty; there is delay; there is acrimony. Also, as more developments age and incur large upgrading and repair bills, opting for en-bloc sale will increasingly become a viable option. But the existing law which requires unanimous consent makes it extremely difficult, if not impossible, to realise en-bloc sales.
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> [emphasis added]

16 In his reply to some of the points raised by Members of Parliament, Associate Professor Ho Peng Kee said the following (*Parliamentary Debates*, vol 69, cols 633-634 (31/07/98)):

> One or two speakers had asked whether the 10-year rule, where the buildings are relatively new, would lead to wastage at the national level. From the records, only about 20% of en-bloc developments have been less than 10 years. Nevertheless, we also know that there may be good reasons why owners in a development which is less than 10 years would want to sell en-bloc. It could be because the plot ratio has been enhanced substantially. It could be because the development is next to a vacant plot of land and there is reason to sell it so that development can be built on a larger piece of land. Or it is next to another development which is perhaps also

less than 10 years old, but it makes economic sense to sell it together. As the approach we take is to facilitate en-bloc sale, we have adopted the 10-year rule.

Mr Lew says that this will mean that it goes against another objective which is to rejuvenate estates. That is a secondary objective. In time to come, when estates become older, I think this will come to the forefront. But at the moment, the primary objective is to help realise enhanced plot ratios so that many more homes can be created for Singaporeans.

The Select Committee, which considered the 1998 Bill and reviewed the 80%/ 90% requisite majority consent, also wrote the following in its report (Select Committee's Report at pp iii-iv):

[10] A number of MPs and representors argued that it would be a waste of resources to tear down a building of *less than 10 years old* which is relatively new. One representor felt that en-bloc sales of buildings *less than 10 years old* should be allowed only under exceptional circumstances. Other representors proposed that the consent level be lowered for buildings older than 20 years.

[11] There were other representors who felt that market forces will determine whether an en-bloc sale is economically viable and, therefore, whether unit owners will sell and developers will buy. Demolishing buildings that are less than 10 years old will not be a waste of resources because the land would be better utilised and its economic potential maximised. Another representor proposed that if the relevant authority decides that a particular area should be developed more intensively, a notice should be served on the unit owners in these developments to compel them to redevelop within a certain time frame.

[12] The Committee recognises that ultimately it will be market forces and conditions which will determine if an en-bloc sale is economically viable. The Committee recommends that the present approach of 90% / 80% majority share value consent level for developments of less than 10 years and 10 years and more respectively should not be changed. *The consent level should be pegged to the age of the development* as it is more likely that older developments will be sub-optimally utilised, have higher repair bills and have more unit owners in favour of en-bloc sales.

[emphasis added]

At the third reading of the 1998 Bill, the Minister for Law at the time, Prof S Jayakumar, said (*Parliamentary Debates*, vol 70, cols 1326-1327 (04/05/99)):

What I propose to do is to highlight only some of the changes made by the Select Committee as well as some of the issues considered by the Committee.

Firstly, the issue as to whether to vary the 90% / 80% majority share value consent level. The Committee heard diverse and sometimes diametrically opposing views on this issue. Some felt that 90% / 80% consent level should be made stricter. Others were in favour of a more liberal, lower level consent requirement, especially for older buildings.

The Select Committee has decided to keep the present approach in the Bill, ie, the 90% consent level for developments less than 10 years and 80% for developments 10 years or older. Ultimately, it should be left to market forces and conditions which will determine if an en-bloc sale is economically viable. The 90% / 80% level linked to the 10 years age of the development was considered a reasonable criterion. *The consent level should be pegged to the age of the development as it is more likely that older developments will be sub-optimally utilised and have higher repair bills.*

[emphasis added]

In his reply to points raised by Members of Parliament, Prof Jayakumar reiterated that the requisite majority consent was pegged to the age of the building (*Parliamentary Debates*, vol 70, col 1341 (04/05/99)):

> *Then we have this key feature, ie, 90%/80% consent requirement pegged to the age of the building*, ie, 10 years or less and 10 years or more, coupled with the institutional mechanism of the Strata Titles Board rather than the Courts for the reasons which are spelt out in the Bill. And the role of the Strata Titles Board is, again, that of facilitating the process, as an avenue for mediating when there are objections and the situation and the type of objections are imponderable. Some examples were given but those are not the only ones. The Board will be taking a non-interventionist approach but we do spell out a few of the categories where the Board expresses its disapproval. But apart from that, the Board will really take a mediating role. [emphasis added]

17 It is clear from the quoted passages above that what Parliament had in mind was to peg the requisite majority consent to the *age of the development*. The words "TOP" or "CSC" were not mentioned at all during the second and third reading of the 1998 Bill by the Minister or any Member of Parliament. I am of the opinion that the references to TOP or CSC in s 84A(1) by the draftsman were merely used as a method of calculating the age of the development. I agree with counsel for the respondents, Mr Quek Mong Hua ("Mr Quek") that the reference to TOP and CSC had no substantive effect, in view of Prof Jayakumar's statement in the Select Committee's Report (at p E 5):

> Amendment No. 2 makes it clear that the age of a development (which is completed in phases), will be calculated from the date when the Temporary Occupation Permit or Certificate of Statutory Completion is issued for the last building in the development. *That is a technical amendment*. [emphasis added]

18 For the above reasons, I am of the opinion that the parliamentary intention in respect of s 84A(1) of the LTSA was to allow en-bloc sales with 80% majority consent for *strata developments* that are *more than 10 years old*. It cannot be said that Parliament had intended to exclude privatised HUDC estates from collective sale by making references to TOP and CSC in s 84A(1). On the contrary, it appears that Parliament had intended s 84A(1) to apply to strata developments (including privatised HUDC estates). This was thus not a case of legislative oversight. Therefore, the appellants' arguments against legislative gap-filling were irrelevant.

19 It is important to point out here that s 9A of the Interpretation Act requires that a construction promoting legislative purpose be preferred over one that does not promote such purpose or object; the effect of s 9A has been usefully considered by VK Rajah JA in the recent case of *PP v Low Kok Heng* [2007] 4 SLR 183 at [39]-[45]. Bearing in mind that the interpretation of a criminal statute may have different emphasis, I agree, generally, with what was said in *Low Kok Heng*, warning, however, that the phrase "purposive interpretation" should not be used without the court keeping an eye on what purposes are involved and whose purposes are being served. "Purposive interpretation" is not a phrase to be used as a password like "open sesame". For the statute in question, for example, making sure that the safeguards in favour of minority subsidiary proprietors are properly observed is just as purposive as giving the majority owners a right to sell en-bloc. The specific question in issue, however, was not one concerning specific protection for the minority. It concerned whether a privatised HUDC estate can participate in the benefits of an en-bloc sale if the requisite conditions are met. In that regard, I think that the court should incline more towards an affirmative answer than a negative one.

20 For the reasons above, I do not hold the view submitted by the appellants' counsel that it would be a strained construction of the statutory provision, but even so, there are circumstances in which a strained construction may be valid. Francis Bennion, *Bennion on Statutory Interpretation* (Lexis Nexis, 5th Ed, 2008) commented as follows (at 458):

> There are broadly four reasons which may justify (and in some cases positively require) the strained construction of an enactment:
>
> (a) a repugnance between the words of the enactment and those of some other enactment;
>
> (b) consequences of a literal construction so undesirable that Parliament cannot have intended them;
>
> (c) an error in the text which plainly falsifies Parliament's intention; or
>
> (d) the passage of time since the enactment was originally drafted.
>
> COMMENT ON CODE S 158
>
> This section states in very broad outline the main reasons why sometimes a strained construction of an enactment is necessary. In many actual cases, the reasons overlap. Each reason is related to the intention of Parliament (the only ultimate criterion). As Blackstone pointed out, it is not always enough for a lawyer to say *ita lex scripta est* (thus the law is written).

If a literal construction was adopted in the present case, the intention of Parliament to allow the en-bloc sale of strata developments that are more than 10 years old if they have the requisite majority consent of 80% would thus be frustrated. The undesirable consequence of the literal interpretation in the present case may have the result that a privatised HUDC estate more than 20 years old cannot participate in a collective sale. I do not think that Parliament intended this effect because one of the reasons for privatising an HUDC estate is to let it enjoy the benefits of a private estate, including a collective sale.

21 Counsel for the appellants submitted that the recent enactment of ss 126A(6A) and 126A(6B) in 2007 is evidence that when Parliament enacted s 84A(1) in 1999, it had deliberately excluded privatised HUDC estates from participating in a collective sale, and the recent enactment of ss 126A(6A) and 126A(6B) was intended to change the existing law. The relevant parliamentary debates do not seem to have discussed the purpose of the enactment of ss 126A(6A) and 126A(6B). However, Mr Yeap pointed out that the enactment appears to have been motivated by views received from consultation with the public on the proposed amendments to the LTSA in 2007. The Ministry of Law in its "Response to Feedback Received from Public Consultation on Proposed Changes to En Bloc Sale Legislation" stated at paras 11.3 and 11.4 as follows:

> <u>Feedback</u>
>
> 11.3 It was suggested that provisions be introduced to make clear the milestone to use to determine the age of a privatised HUDC that is applying for en bloc sale as some HUDC developments may not have TOP or CSC.
>
> <u>Response</u>
>
> 11.4 We agreed with the suggestion and had provided in the legislation that in determining the

age of a privatised HUDC estate that is applying for an en bloc sale under the LT(S)A, reference can, in addition to the date of issue of the latest Temporary Occupation Permit or the latest Certificate of Statutory Completion, also be taken from the date of completion of construction of the building as certified by the relevant authority (eg. HDB).

In light of this as well as Parliament's intention when it enacted s 84A(1), I am of the view that ss 126A(6A) and 126A(6B) were enacted to clarify the position in regard to privatised HUDC estates and not to change the existing law. I, therefore, hold that s 84A(1) of the LTSA applies to privatised HUDC estates.

22 The next major issue concerned the question whether it was s 84A(1)(a) or s 84A(1)(b) that was applicable in this case. Counsel for the appellants argued that even if s 84A(1) were applicable to privatised HUDC estates, the requisite majority consent required for the collective sale of the Development should be 90% as provided in s 84A(1)(a) and not 80% as provided in s 84A(1)(b) because:

(a) A CSC was issued on 23 October 2002 for "4 Blocks of 20-Storey Flats and 6 Blocks of 4-Storey Maisonettes on Lot(s) 01478C MK01 at Gillman Heights" for works done for the privatisation of Gillman Heights; and

(b) A TOP was issued for the new single-storey clubhouse with swimming pool on 27 November 2002.

Counsel submitted that s 84A(1)(b) should apply because it had only been less than 10 years since the CSC or TOP in question here was issued.

23 As demonstrated above, the intention of Parliament seemed to be to peg the requisite majority consent to the age of the estate. It was not disputed that, with the exception of one block, the Development was completed in December 1984. The exception was a block that was completed in October 1984. Therefore, in my view, the Development was more than 20 years old when the application to the Board was filed.

24 Furthermore, it appears that the CSC and TOP in question would not avail the appellants even if a strict literal reading of the relevant s 84A(1) was adopted. The relevant s 84A(1) states that the relevant date is "the date of the issue of the latest Temporary Occupation Permit on completion of *any building comprised in the strata title plan* or, if no Temporary Occupation Permit was issued, the date of the issue of the latest Certificate of Statutory Completion for *any building comprised in the strata title plan*, whichever is the later." [emphasis added] In respect of the TOP issued on 27 November 2002, it was issued for the new single-storey clubhouse and the swimming pool. The parties at the hearing agreed that the strata title plan that was issued after the privatisation of the Development did not reflect the clubhouse or the swimming pool. The appellants did not tender a recent strata title plan that reflected the clubhouse (the swimming pool was not considered a building) as a "building comprised in the strata title plan". The respondents' and Purchaser's counsel contended that the clubhouse and the swimming pool, being common property of the Development, would not, in any event, be reflected in the strata title plan. As for the CSC, although it was stated to be issued in respect of "4 Blocks of 20-Storey Flats and 6 Blocks of 4-Storey Maisonettes on Lot(s) 01478C MK01 at Gillman Heights," it is undisputed that the CSC was, in fact, issued in respect of upgrading works on the common property as part of the privatisation of the Development, and not "any building comprised in the strata title plan". Henceforth, the TOP and CSC in question here are not relevant for the purposes of s 84A(1) (even if the strict literal reading is adopted).

25 There was some merit in the respondents' and the Purchaser's submission that the latest amendments to s 84A(1) of the LTSA in 2007 showed that the phrase "building comprised in the strata title plan" was not intended to include common property. The present s 84A(1) (after the 2007 amendments) reads as follows:

> 84A. —(1) An application to a Board for an order for the sale of all the lots and common property in a strata title plan may be made by —
>
> (a) the subsidiary proprietors of the lots with not less than 90% of the share values and not less than 90% of the total area of all the lots (excluding the area of any accessory lot) as shown in the subsidiary strata certificates of title where less than 10 years have passed since the date of the issue of the latest Temporary Occupation Permit on completion of any building (*not being any common property*) comprised in the strata title plan or, if no Temporary Occupation Permit was issued, the date of the issue of the latest Certificate of Statutory Completion for any building (not being any common property) comprised in the strata title plan, whichever is the later; or
>
> (b) the subsidiary proprietors of the lots with not less than 80% of the share values and not less than 80% of the total area of all the lots (excluding the area of any accessory lot) as shown in the subsidiary strata certificates of title where 10 years or more have passed since the date of the issue of the latest Temporary Occupation Permit on completion of any building (*not being any common property*) comprised in the strata title plan or, if no Temporary Occupation Permit was issued, the date of the issue of the latest Certificate of Statutory Completion for any building (not being any common property) comprised in the strata title plan, whichever is the later,
>
> who have agreed in writing to sell all the lots and common property in the strata title plan to a purchaser under a sale and purchase agreement which specifies the proposed method of distributing the sale proceeds to all the subsidiary proprietors (whether in cash or kind or both), subject to an order being made under subsection (6) or (7).
>
> [emphasis added]

The purpose of amending s 84A(1) to include the words "not being any common property" was explained in the Explanatory Statement of the Land Titles (Strata) (Amendment) Bill (Bill No 32 of 2007) as follows:

> Clause 7 amends section 84A(1) to add a new requirement that subsidiary proprietors with at least 90% of the total area of all the lots in the strata title plan for developments that are less than 10 years old, or subsidiary proprietors with at least 80% of the total area of all the lots in the strata title plan for developments that are at least 10 years old, must agree to a collective sale before an application for such sale may be made to a Board. *The clause also clarifies that the reference to "building" in the section does not include any common property in a development*. [emphasis added]

I am thus of the opinion that the applicable provision was s 84A(1)(b) of the LTSA and not s 84A(1)(a), that is to say, the requirement for a majority was 80%.

26 Mr N Sreenivasan ("Mr Sreenivasan"), argued on behalf of the appellants and applicants in OS No 192, that even if the applicable provision was s 84A(1)(b) of the LTSA, there was no valid CSA at the material time given that it had expired pursuant to either cl 11(b) or cl 11(c) of the CSA, which

provided as follows:

> PERIOD OF VALIDITY OF THIS AGREEMENT
>
> As from the Date of this Agreement, all terms, convenants, conditions, representations and undertakings herein shall remain in full force and effect and be binding on the Vendors and this Agreement shall be determined only on occurrence of any of the following events:
>
> …

(b) The permitted time referred to in Clause 1A of the [First Schedule to the LTSA] in relation to this Collective Sale Agreement has lapsed. …

(c) The STB's Approval under Clause 10 shall not be issued within twelve (12) months from the Date of this Agreement. …

27 Given that the first signatures of the CSA were collected on 18 February 2006, Mr Sreenivasan argued that the CSA had expired on 17 February 2007 by virtue of cl 11(b), and thus, at the time of the Application to the Board, *ie* 3 May 2007, there was no valid CSA. That argument, however, conflated the permitted time for a collective sale agreement to be validly executed (as stipulated by para 1A of the First Schedule to the LTSA) with the permitted time for an application to be made to the Board (as stipulated by para 1(a) of the First Schedule to the LTSA) and, thus, in my view, was of no assistance to Mr Sreenivasan's clients.

28 It is useful to set out the relevant provisions of the LTSA, namely, paras 1(a) and 1A of the First Schedule:

> 1. Before making an application to a Board, the subsidiary proprietors referred to in section 84A(1) or the proprietors of flats referred to in section 84D(2) or 84E(3), as the case may be, shall –
>
> > (a) execute within the permitted time but in no case more than 12 months before the date the application is made, a collective sale agreement in writing among themselves (whether or not with other subsidiary proprietors or proprietors) agreeing to agree to collectively sell - … (i) in the case of an application under section 84A, all the lots and common property in a strata title plan; …
>
> …
>
> 1A. For the purposes of this Schedule - … (a) the permitted time in relation to a collective sale agreement executed or to be executed by subsidiary proprietors or proprietors referred to in section 84A(1), 84D(2) or 84E(3), means a period - …
>
> > (i) starting from the date the first subsidiary proprietor or proprietor, or his duly appointed attorney, as the case may be, signs the collective sale agreement; and
> >
> > (ii) ending not more than 12 months after the date the first subsidiary proprietor or proprietor, or his duly appointed attorney, as the case may be, signs the collective sale agreement; and … (b) the collective sale agreement shall be regarded as executed notwithstanding that it is executed on separate copies thereof and at different times.

The 12-month periods in paras 1(a) and 1A may overlap but do not refer to a single period. They

operate independently so that the general scheme allows the CSP 12 months from the first signature to the last signature to obtain the requisite 80% majority. If they do so within this "permitted time" the majority may then make an application to the Board for its approval for sale provided that the CSA had not been executed more than 12 months earlier by the requisite number of owners from the date the application was made. In the present case, the first signature was appended on the CSA on 18 February 2006. The last (having passed the 80% mark) was appended on 23 June 2006. The CSA in this regard has satisfied the requirement of para 1A. The Application was made to the Board on 3 May 2007 and was within the 12 month requirement under para 1(a), that is to say that the Application was made before 22 June 2007, 12 months after the requisite majority has obtained. I am unable to agree with counsel's submission that the permitted time expired on 17 February 2007, namely, 12 months after 18 February 2006. The Act does not expressly relate the 12 months in para 1A to that in para 1(a). The references to 12 months and "permitted time" in the two sections might have created an impression that they relate to the same period, but as I explained above, they do not. When a law requires interpretation the court has to be mindful that its interpretation is within a sensible reading of the words under interpretation and does the least harm to the parties in the proceedings without laying a principle that might subsequently be misunderstood or applied in such a way that the good presently done becomes tomorrow's burden to others. The law must be expressed in such terms that the layman sitting in a quasi-judicial capacity will find it easy to understand. In this case, and I can only speak of this case, the Board also understood the operations of paras 1(a) and 1A in the same way as I do.

29 Mr Sreenivasan argued, alternatively, that the CSA expired on 22 June 2007 by virtue of cl 11(c) given that the Board's approval had not been obtained "twelve (12) months from the Date of [the CSA (*ie*, 23 June 2006)]", since that approval was obtained only on 27 December 2007. The validity of this argument depended on whether the CSA itself had been validly extended by the SCSA, that is, the extension of the deadline for obtaining the Board's approval ("the deadline") to 5 February 2008. The appellants and applicants argued that there was no valid extension as 26 SPs had signed the CSA after the permitted time, *ie* after 17 February 2007, and thus these 26 SPs could not have validly extended the time by signing the SCSA (excluding these 26 SPs would reduce the majority percentage to 83.27%), and that 20 CSPs who had signed the CSA before 17 February 2008 did not sign the SCSA subsequently (excluding these 20 SPs would reduce the majority percentage by a further 3.29%). Counsel seemed to be submitting that there was no requisite 80% majority to extend the deadline and the CSA. On the other hand, Mr Yeap submitted that there was no need to delve into these figures as the Sales Committee had, for and on behalf of and as agents of all the "Vendors" (defined in cl 1.1 of CSA as "the Registered Proprietors who have executed [the CSA] and any supplemental agreement") agreed to extend the deadline for obtaining the Board's approval to 5 February 2008 under cl 6.2.1 of the Sale and Purchase Agreement ("S&P"), by agreeing to obtain the Board's approval within 12 months of the date of the S&P, *ie*, 5 February 2007:

> The Vendor shall apply to the STB for the said order. *The said order shall be obtained on or before <u>twelve (12) months</u> from the Date of this Agreement*. [emphasis added]

I am unable to accept this submission that cl 6.2.1 of the S&P had extended the deadline. In fact, cl 1A.1 of the S&P would suggest that the Sales Committee had to obtain the agreement of SPs with 80% of the share values of the Development for the extension of the deadline:

> The Sales Committee under the CSA ("the Sale Committee") shall on behalf of the Vendor use their best endeavours to procure the validity of the CSA to 5 February 2008 ("the Extension") by getting the agreement of the Subsidiary Proprietors who own eighty per cent (80%) of the share values of the Development.

30 However, I am of the view that the SCSA had extended the deadline (and the validity of the CSA). Clause 1.9 of the CSA permitted SPs who have not signed the CSA to sign a supplemental agreement after the date of the CSA to join in the collective sale and the clause also specifically provided that "Vendors" (which included the CSPs) need not execute such supplemental agreement:

> Nothing herein contained shall prevent the Registered Proprietors who have not executed this Agreement from executing this Agreement or executing a supplemental agreement (in the form set out in Schedule 6 or in such other form as the Marketing Consultants and the Solicitors shall advise) ("Supplemental Agreement") agreeing to or joining in or consenting to the Collective Sale on or *after the Date of this Agreement*. *The Vendors shall not be required to execute the Supplemental Agreement*. [emphasis added]

Thus, I agree with the Board that "whatever the permutation" (Board's Grounds of Decision ("GD") at [54]) the figures take, there was no evidence that the requisite majority was not obtained when the CSA or SCSA was signed, and it follows that the extension of the deadline by the SCSA was valid.

31 I turn now to the appellants' argument of non-compliance of the notification requirements stipulated by ss 1(b) and 4(b)(iii) of the Schedule to the LTSA. The appellant's complaint here was not so much that the required notices were not put up, but that the notices were not affixed to "conspicuous parts of each building in the strata title plan" (s 1(b) of the Schedule to the LTSA), and, consequently, s 4(b)(iii) was also breached by virtue of a false statutory declaration that "the notices referred to in paragraph 1(b) were affixed". The appellants further drew my attention to s 84A(3) of the LTSA, which states as follows:

> *Subject to subsection (7C)*, no application may be made under subsection (1) by the subsidiary proprietors referred to in that subsection *unless they have complied with the requirements specified in the First, Second and Third Schedules* and have provided an undertaking to pay the costs of the Board under subsection (5). [emphasis added]

In the present case, the respondents admitted that the relevant notices were only put up on the Development's 15 conspicuous notice boards located throughout the Development (some at certain residential blocks, while others were located next to certain residential blocks and the clubhouse), and were not, strictly speaking, physically affixed on every building itself in the Development (which a literal interpretation of s 1(b) of the Schedule to the LTSA required). Nonetheless, the Board (its members having paid a site visit to the Development) decided that there was substantial compliance with ss 1(b) and 4(b)(iii) of the Schedule to the LTSA, after finding that s 1(b) was quite incapable of extreme strict compliance in the present case, given the design and physical layout of the buildings in the Development (see GD at [35]-[36]). I am not minded to disturb the Board's finding. The importance of compliance with the requirements specified in the First Schedule of the LTSA cannot be overstated and is made plain by s 84A(3) of the LTSA. However, the opening words of that section also make it clear that s 84A(3) is read subject to s 84(7C) (see [32] above), which provides as follows:

> A Board *shall not invalidate* an application to the Board for an order under subsection (1) or section 84D(2), 84E(3) or 84FA(1) by reason only of non-compliance with any requirement in the First, Second or Third Schedule *if the Board is satisfied that such non-compliance does not prejudice the interest of any person*, and the Board may make such order as may be necessary to rectify the non-compliance and such order for costs. [emphasis added]

It was therefore open to the Board in this case to find that placing the notices on the various notice boards in the Development had served the function of ensuring that all relevant parties had adequate

notice and information about the collective sale of the Development (which is the purpose of the procedural requirements stipulated in the LTSA: see *Ng Swee Lang and Another v Sassoon Samuel Bernard and Others* [2008] 1 SLR 522 at [51]) and that no party had been prejudiced by this (GD at [39]). With the general idea of the purposiveness of the rule in mind, and what I had said in [19] above, I am of the opinion that the Board did not err in law in this regard.

32 Lastly, the appellants raised the question of bad faith and breach of natural justice. First, they say that the NUS was a member of the CSPs, but evidence of its investment and commercial venture with the Purchaser was not disclosed to the Board, and the Board was thereby unable to properly consider whether the sale was tainted by bad faith. They also contend that the Board erred in law in granting the collective sale order when the transaction was not in good faith, having regard to the sale price. Secondly, the appellants complain that Mr Ng, one of the members of the Board, was a real estate valuation expert who had worked in projects in which the solicitors for the respondents were also involved professionally for the developer or purchaser, and therefore, it was argued, that Mr Ng might not appear to be free from bias.

33 Section 84A(9) of the LTSA deals specifically with issues of bad faith and provides as follows:

The Board shall not approve an application under subsection (1) –

(a) if the Board is satisfied that –

(i) the transaction is not in good faith after taking into account only the following factors:

(A) the sale price for the lots and the common property in the strata title plan;

(B) the method of distributing the proceeds of sale; and

(C) the relationship of the purchaser to any of the subsidiary proprietors;

Mr Quek submitted that the NUS held 46.86 % of the total share values in the Development. However, as at the date in which the required 8-week notice was displayed (14 April 2006), there were already 32.41% of CSPs excluding the NUS who had signed the CSA. That being the case, the NUS as a CSP, was entitled to exercise its right as a CSP to vote for the collective sale. I do not think that the exercise of its right is wrongful in any way, or that it should be regarded as a mark of bad faith. The minority CSPs were duly noted of the NUS vote and execution of the CSA about six weeks before the application for approval was submitted to the Board. The greater complaint was that the NUS appeared to have invested in the shares of the Purchaser. This would be relevant under s 84A(9)(a)(i)(C) above. Mr Yeap submitted that the NUS-Purchaser relationship was not raised before the Board even though the information the minority now relied upon was publicly available, and the witness from the NUS who testified before the Board could have been questioned on it. I thus agreed that the evidence that was sought to be adduced afresh before me should not be admitted. A court deliberates only on the basis of the evidence before it. While making sure that evidence of impropriety has not been overlooked, the court must also take into account the potential procedural impropriety by a party not adducing the relevant evidence diligently in the hope of keeping such evidence in reserve for a second stage assault. By its nature, such evidence and tactics are difficult to detect. The way to prevent them is to adhere to the rules of evidence as strictly as possible. Whether or not there was an act of bad faith by reason of the relationship between the relevant parties is strictly a finding of fact for the Board. I am not persuaded that the Board ought to hear the parties again on the issue of the relationship between the NUS and the Purchaser. As for the contention of bad faith in regard to the sale price (this would be under s 84A(9)(a)(i)(A) above), I am in full agreement with the

reasons given by the Board (see GD at [55]-[63]) why there is no bad faith in the present case, given the sale price of $548m, which is $20m above the reserved price. The other en-bloc sale prices (of other estates) put forward by the appellants are not viable comparables as they were not privatised HUDC estates and/or were sold at a different time from the Development. I note that the Development was sold before the property hike in 2007, and it would not be appropriate for the Board or for this court to assess good faith with regard to the sale price of the Development through the lens of hindsight. The decision of when to sell the Development was solely a decision of the majority SPs, and once that decision had been made, it was not open to SPs to complain that a collective sale lacked good faith pursuant to s 84A(9)(a)(i)(A) (and thus they want out now) for the sole reason that (on hindsight) the Development could have been sold at a higher price (for whatever reason) if they had waited a while longer.

34 In respect of the complaint on breach of natural justice, namely that Mr Ng was in a conflict of interest situation because he had worked on the same projects with the CSPs' solicitors in the past, I am of the view that it is too tenuous an objection. Professionals cannot avoid working on the same projects. It does not follow that they necessarily agree or have reasons to be biased or prejudiced (since it is not necessary that they would like each other just because they work together) against the other professionals. Mr Quek also pointed out that there was no objection against the appointment of Mr Ng within the statutory time limited for such objections, that is, seven days from the notification of appointment. More importantly, Mr Ng was one of five members of a Board. The Board had considered the question of fair valuation and appeared to have given all the evidence due consideration. Their decision as to fair value was a finding of fact and one which an appellate court ought not reverse.

35 For the reasons above, I am satisfied that the applications by the minority proprietors before me must fail. The applications are therefore dismissed with costs to be taxed if not agreed.