

How to recover monies due from defaulting strata owners?

TOUGHER ENFORCEMENT: Under the new Strata Management Act, parcel owners can be sued by the developer or JMB and upon conviction be fined or imprisoned; or their properties seized if they do not pay their maintenance charges or sinking fund.

The Strata Management Act, 2013 received its Royal Assent on 5 February, 2013 and was gazetted on 8 February, 2013. It is now known as Act 757.

One of the important sections of the law in the Strata Management Act, 2013 (SMA) that has been passed by Parliament but is yet to be implemented (pending the finalising and gazetting of its supporting Regulations) relate to payment of maintenance dues, charges, sinking funds and other outgoings - that are justified.

Without such payments, the JMBs (Joint Management Bodies) and MCs (Management Corporations) cannot function even from the start. Just like the case of an automobile, without the intake of petrol, the machine cannot run by itself although the driver may have the ignition key.

We reproduce the pertinent sections of the laws for ease of understanding their actual formulated words and sentences. Strata unit owners are advised to get acquainted with the SMA, its rules and bylaws governing sub-divided buildings.

The recovery of sum as a debt due to JMB

Section 33

(1) The payment of any amount of money lawfully incurred by the JMB in the course of the exercise of any of its powers or functions or the carrying out of its duties or obligations shall by virtue of this section be guaranteed by the parcel owners for the time being constituting the JMB.

(2) Each parcel owner shall be liable under the guarantee referred to in subsection (1) only for such proportion of the money so incurred as the allocated share units of his parcel bear to the aggregate share units.

(3) Where any parcel owner has not discharged or fully discharged his liability for the purpose of subsection (1), the JMB shall be entitled to recover from the parcel owner in a court of competent jurisdiction or in the Tribunal (i.e. Strata Management Tribunal that we have emphasised in our earlier issue of NST RED 15 February 2013) as a debt due to it.

(4) Where for reasons of insufficiency of funds to meet the

sum guaranteed under subsection (1), the JMB may, at an annual general meeting or at an extraordinary general meeting, determine the amount to be contributed by each parcel owner and decide any other issue or matter relating to the settlement of the said sum.

Procedure on recovery of sums due

Section 34

(1) Where a sum becomes recoverable by the developer from the purchaser in respect of his parcel by virtue of subsection 12(5), or by the JMB from the parcel owner in respect of his parcel by virtue of subsection 25(6) or 33(3), the developer or the JMB may serve on the purchaser or the parcel owner, as the case may be, a written notice demanding payment of the sum due within the period as may be specified in the notice which shall not be less than 14 days from the date of service of the notice.

(2) If any sum remains unpaid by the purchaser or parcel owner at the end of the period specified in the notice under subsection (1), the developer or the JMB, as the case may be, may file a summons or claim in a court of competent jurisdiction or in the Tribunal for the recovery of the said sum or as an alternative to recovery under this section, resort to recovery under section 35.

(3) Any purchaser or parcel owner who, without reasonable excuse, fails to comply with the notice referred to in subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding RM5,000 or to imprisonment for a term not exceeding three years or to both, and in the case of a continuing offence, to a further fine not exceeding RM50 for every day or part thereof during which the offence continues after conviction.

Recovery of sums by attachment of movable property

Section 35

(1) The Commissioner may, upon sworn application in writing made by the developer or any member of the joint management committee, issue a warrant of attachment in Form A of the Third Schedule authorising the attachment of any movable property belonging to the defaulting parcel

owner which may be found in the building or elsewhere in the State.

(2) The warrant of attachment under subsection (1) shall be executed by the developer or a member of the joint management committee or by a person specially employed by the developer or the JMB to execute such warrant, in the presence of the Commissioner or an officer from the office of the Commissioner.

(3) If the developer or the member of the joint management committee or the person referred to in subsection (2) encounters difficulties in executing the warrant, such developer, member or person may seek the assistance of the Commissioner, and in providing such assistance, the Commissioner may request for the assistance of a police officer not below the rank of Inspector.

(4) A person executing the warrant (a) may, in the daytime, effect forcible entry into any house or building or any part of the house or building for the purpose of executing the warrant; and

(b) shall, immediately after attachment, make an inventory of the property attached under the warrant and serve a notice in Form B of the Third Schedule on the person who, at the time of attachment, was or appeared to be in possession of the property.

(5) Any tenant, subtenant, or occupier who, in order to avoid the attachment or sale of the movable property for non-payment of any sum due to the developer or the JMB by the parcel owner, pays such sum may—

(a) in the absence of any written agreement to the contrary, deduct the amount so paid by him from the rent due or to become due by him to the parcel owner; and

(b) retain possession of the property until such amount so paid by him has been fully reimbursed to him, whether by deduction from the rent or otherwise.

(6) The receipt issued by the developer or the joint management body for any amount so paid by any such tenant, subtenant or occupier under subsection (5) shall be deemed a discharge in full for the like amount of rent.

(7) If any person whose property is attached disputes the legality of the attachment, he may, within 14 days of the date of attachment, apply to the Magistrate's Court having jurisdiction in the place of attachment for an order for the release of the property, and the Magistrate's Court, after making such enquiry as may be necessary, shall grant or refuse to grant the order.

(8) If the sum due is not paid within 14 days from the date of attachment, the property attached or such portion



of the property attached as may be sufficient to realise the sum shall be sold by auction conducted by the developer or the JMB under the supervision of the Commissioner unless within that period an application is made under subsection (7), in which case, the property shall be held pending the decision of the Magistrate's Court and shall then be dealt with as the Magistrate's Court may order.

(9) If the Magistrate's Court refuses to grant an order for the release of the property, and that decision of the Magistrate's Court is reached within 14 days from the date of attachment, the property shall not be sold before the expiry of that period.

(10) Notwithstanding subsections (8) and (9), if the property is of a perishable nature, it may be sold at once, and in that case, the proceeds of sale shall be held pending the decision of the Magistrate's Court and shall then be dealt with as the Magistrate's Court may order.

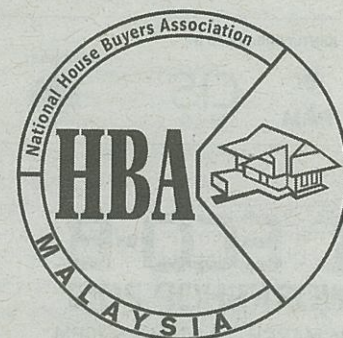
(11) In any other case, the proceeds of sale shall be applied in satisfaction of the sum due together with the costs of the attachment and sale, and any surplus and any property not sold shall be paid or returned to the person who, at the time of attachment, was or appeared to be in possession of the property.

(12) The costs of attachment shall include the expenses of the maintenance of livestock and the custody of movable property.

(13) Where any property is sold by virtue of subsection (10) before the expiry of 14 days from the date of attachment, the reference in subsection (7) to "an order for the release of the property" shall be construed as a reference to an order for the release of the proceeds of the sale of the property.

Footnote:

There are corresponding Sections 77, 78 & 79 in the SMA that relate to the same matter in regards to Management Corporation (MCs) and Subsidiary Management Corporation (Sub-MCs).



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