

Problems and implications of en bloc in singapore



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Abstract

Due to the increasing demands and the needs to cater to the future population, the Urban Redevelopment Authority of Singapore released development guide plans, which encourage redevelopment of existing land. Despite the fact that the utmost motive for En Bloc is to increase land value and to maximize land use, the sale of En Bloc has come to a point that the public has raised concerns over the problems and implications that have occurred. This paper will show clearly what are the problems and implications of en bloc and on the discussion of whether the government intervention is another solution to the problems of the en bloc. The authors' main objective is to list out the main problems that have arisen with the rising trend of En Bloc.

Keywords: En Bloc, Government Intervention, Problems and Implications

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Table of Contents

Abstract 2

Acknowledgement 3

Table of Contents 4

Chapter 1. 0 Introduction 5

1. 1 Background 5

1. 2 Objectives 6

1. 3 Scope of study 6

1. 5 Sources of research 7

1. 6 Definition of En Bloc 7

1. 7 Collective Sale Agreement 8

Chapter 2. 0 Procedures and Legal Framework of En Bloc 11

2. 1 Stage of En Bloc 11

2. 2 The requirements of En Bloc from Strata Title Board 14

2. 3 Sale committee 14

2. 4 Requirements 15

2. 5 Chairperson 15

2. 6 En Bloc sale by public tender or auction 16

2. 7 Extraordinary general meeting 17

2. 7. 1 General meetings convened by collective sale committee 17

Chapter 3. 0 Case Studies – Horizon Tower 19

3. 1 Case Summary 19

3. 1. 1 Introduction for Horizon Tower 19

3. 1. 2 Review of Case 19

3. 2 Particulars of development & condition of site 20

3. 3 Reason for en bloc sale 21

3. 4 Judge decision on horizon tower case 22

3. 5 Problems identified 25

3. 5. 1 Time Problem 25

3. 5. 2 Momentary problem 25

3. 5. 3 Problem with the Procedure 26

3. 5. 4 Problem in the Sale Committee 26

Chapter 4. 0 – Problems and Implications of En Bloc 28

4. 1 Minorities Rejecting the En Bloc 28

4. 2 Pro En Bloc Subsidiary Proprietors 29

4. 2 Property Prices 30

4. 4 Implication 31

4. 5 Freedom of choice 32

4. 6 Interest of the minorities 32

4. 6 Government 33

Conclusion 34

References 36

Appendix 38

Chapter 1. 0 Introduction

1. 1 Background

Based on the first ever successful attempt of En Bloc attempt, En Bloc actually started in Singapore in the year 1994 (Low 1999). October 1994 marks the first ever en bloc of Cosy Mansion. Owners of Changi Heights, another freehold condominium also received a windfall gains by selling Changi Heights through en bloc. The purpose of en bloc was to maximize land use, as Singapore has very limited land to develop, developers has to find other ways to increase their land banking or to develop properties (Uma Shankari 2010). From the owners view, en bloc motivates individual owners to participate in the en bloc sales when the potential value of the land surpasses the “ marriage” value of the land[3]and the physical improvement thereon.. Over the years, the government has been monitoring and controlling the rules and regulations of the En Bloc (Chuang Peck Ming, 2010). However, even with the strict rules, problems and implications that arise from the En Bloc continue to raise concerns over the public and

attention of the media, especially the minorities whom initially objected to the en bloc (Chan, 2007).

1. 2 Objectives

The objective of this paper is to identify the problems that would commonly occur with En Bloc and on the implication it has on the society and the real estate market. We believe that this paper will give us a better understanding on what are the main issues that could contribute to a ensure a smooth process of en bloc and to increase the success rate of en bloc. This would be done through a clear understanding of rules and regulations that the authorities have set.

1. 3 Scope of study

Our scope of study would be on a case study of the Horizon Tower. This is a unique case as it sparks a 2 and a half year long battle in the court over problems which have arise during the En Bloc process of the Horizon Tower. The roles of the parties involved and the legal problems would be our main focus. The parliament released new rules that should be obeyed in regard to this case.

1. 5 Sources of research

This paper is based on information on the studying of cases from the newspaper article that are recent and on information abstracted or summarized from Land Title Strata Act (LTSA)[4]and Strata Title Board (STB) [5]. We have also conducted research on information discussed on market analysis done by property and marketing agents.

1. 6 Definition of En Bloc

The definition on en bloc or collective sale means the sale of an entire private strata development by way of majority consent and is governed by the Land Titles (Strata) Act (MOL[6]). En bloc is made possible through ideas of redeveloping the current target property comprehensively. Owners of separate units in an apartment, landed properties, adjoining development, condominium or even an office building can band together to collectively sell out their properties to a developer. Sale proceeds will then be divided among all the unit owners. The amount of profits they get varies and is dependent on the developer and the agreement that was established between the marketing agent and the developer.

1. 7 Collective Sale Agreement

En Bloc can be conducted through private treaty, public and private tender. Usually En Bloc is conducted through public tender in order to create more transparency and to create more choices of interested parties for the en bloc (LTSA) (The Schedule. Paragraph 1).

There are two main legal documents-the Collective Sale Agreement and the Sale and Purchase Agreement. A tender document would act as the legal document for En Bloc which is conducted through tender, either publicly or privately. (See Appendix 1)

Some basic terms that would be included in the Collective Sale Agreement;

Reserve price

Method on distribution of sales proceeds

Validity of period of the Collective Sale Agreement

Provisions for majority that have agree to the agreement

Date to deliver vacant possession

Sale subjectivity to tenancies

Refer to (LTSA) [Sections 84A (9), 84D (7), 84E (9) and 84FA (9)]

1. 8 Timeline of En Bloc Trend in Singapore

1993 -1994

This is the year where en bloc actually started although there is no evidence that prior to this date, en bloc has already taken place. But through research, the first ever successful en bloc was on the year 1994, through Cosy Mansion and Changi Heights transacted – first ever successful en bloc in Singapore.

En bloc phenomenon began as the real estate market took a sliding up the ladder, property was booming and developer sees it as a very good chance to redevelop old property to meet the demands and expectations for the real estate market. As a result, the en bloc trend climbed steadily and fast with the real estate market in Singapore (Tien Foo Sing, 2004).

1999

The rules on en bloc changed and strata title board introduce the 80 percent majority consent, 90 percent if estate is less than 10 years old, making it easier for place to en bloc (LTSA)(Part VA)(84A)(1)(a).

2007

In year 2007, Deputy Prime Minister and Law Minister S Jayakumar announced that en bloc sales must be agreed by those who own at least 80 or 90 percent of units in the development on top of the current rule stating that 80 percent voting rights for property more than 10 years of age and 90 percent for less than 10 years of age (Kalpana Rashiwala, 2007).

The ministry of law also proposes to Strata Title Board to issue guidelines on allowable expenditure when evaluating claims of financial loss.

2010

The Parliament passed down an amendment act on May 18. The act will take effect at 15th of July. The key features of the new act include imposition of a two-year restriction period after a failed en bloc attempt, and to re-try, 50 percent of the combined share value or number of owners need to give their consent while approval from 80 percent for the second re-trying of the en bloc attempt. The automatic dissolution of any Sales Committee prior to failure to collect signatories to is Collective Sales Agreement (CSA) within one year (Uma Shankari, 2010).

Chapter 2. 0 Procedures and Legal Framework of En Bloc

2. 1 Stage of En Bloc

Phase 1: Pre-Sale Preparation

Owners would come together to agree and sign the Collective Sale Agreement usually through the [7]sale committee. In some instances, owners would need to sign petition or letters of authorization to agree to the collective sale. An Extraordinary General Meeting will be held to appoint an

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en bloc lawyer and property agent, the apportionment of sales proceeds, and approval of the terms and conditions of the Collective Sale Agreement. This stage would roughly take 12 months.

Phase 2: Collective Sale Agreement

Owners would be asked to sign the Collective Sale Agreement, 80 percent of signatures are needed if the building is more than 10 years old while 90 percent of signatures are needed if the building is less than 10 years old. This process would roughly take another 12 months.

Phase 3: SP Meeting

Owners will be updated on the total numbers of SPs who have signed the Collective Sale Agreement. The sale committee and any solicitor would provide information to the owners on the sale proposal and sales proceeds.

Phase 4: Public Tender Stage/Bid for Tender Stage

Once the collective Sale Agreement is signed, the sale committee would have to look for interested buyers/developers. To ensure transparency, this must be done through public tender exercise. Interested developers would then submit their bids.

Phase 5: Post Tender

The sale committee will then evaluate the bids and negotiate with the developers on details prior to the sale. The terms and conditions of the Sale and Purchase Agreement will also be discussed at this phase. Phase 3 to Phase 5 would take up to an estimated time of 12 months.

Phase 6: Legal Completion

The sale committee and the developer will then obtain an order from the Strata Titles Board. The strata title board will only allow the en bloc to proceed once the requirements are met. Upon approval, the developer would be awarded a conditional contract. The deposit that was originally paid is held by the vendors' lawyer as stakeholder. This would probably take 2-3 months.

Last Phase

Normally, it is very unlikely that there are no owners who objected to the sale. Owners who object to the sale can raise objection to Strata Title Board. These objections will also be considered before deciding on the outcome on the application of the sale. Parties who are unsatisfied with the Strata Title Board's decision can challenge the decision through the judiciary's appeal system. Time taken at this phase is undetermined.

In conclusion, the time take for a successful en bloc would take roughly 1 to 2 years, while other cases would take up to 3 years and above.

2. 2 The requirements of En Bloc from Strata Title Board

These are the few requirements that the strata title board would look at to decide for whether the en bloc to proceed. The Strata Titles Board will consider whether the sale was done in good faith and at arm's length. In order to determine whether the sale was conducted fairly, the Board will consider all the facts of the sale-such as the sale price, the distribution of the proceeds, and the relationship between the purchaser and any of the

owners. Normally, it is very unlikely that there are no owners who objected to the sale. For further details of the requirements of the Strata Title Board on the revision of en bloc cases, please refer to Appendix 2.

2. 3 Sale committee

Members of collective sale committee

A collective sale committee shall comprise such number of persons as may be determined in a general meeting convened in accordance with the Second Schedule, but in no case less than 3 members or more than 14 members who are natural persons. The person that eligible for election as a member of a collective sale committee shall be unless he is an individual of at least 21 years of age. The threshold number for that subsidiary proprietor shall be the number of collective sale committee members that is proportional to the subsidiary proprietor's share value, ignoring any fraction, whichever number is the lower (LTSA)(Third schedule)(1).

2. 4 Requirements

A person standing for election as a member of a collective sale committee who has any direct or indirect interest in any property developer, property consultant, marketing agent or legal firm, being an interest that could conflict with the proper performance of his functions as a member of a collective sale committee (should he be elected) shall, as soon as practicable after the relevant facts have come to his knowledge, disclose the nature of that interest at a general meeting. (Disclosure of interests). The requirements of the sale committee and information on what are their duties and roles are based on the schedule by the Land Strata Title Act. There are

altogether four schedules and are waiting to be revise at the year 2010 (LTSA)(Third schedule) (2).

2. 5 Chairperson

About the appointment of the chairperson of the sale committee, the chairperson shall be elected from its members. The chairperson has to preside at all meetings of a collective sale committee at which he is present and, if he is absent from any such meeting, the members of the collective sale committee present at that meeting shall appoint one of their number to preside at that meeting during the absence of the chairperson (LTSA)(Third schedule)(3).

At any meetings of a collective sale committee, a quorum shall consist of the majority of the members of the collective sale committee. The decision of the majority of the members of the collective sale committee present and voting at any meeting of the collective sale committee shall be a decision of the collective sale committee. A record shall be cause of its decisions and minutes of its meetings to be kept (LTSA) (Third schedule) (6).

2. 6 En Bloc sale by public tender or auction

The collective sale of all lots and common property in a strata title plan shall be launched for sale only by way of public tender or public auction. A valuation report by an independent valuer on the value of the development as at the date of the close of the public tender or public auction shall be obtained by the collective sale committee on the date of the close of the public tender or public auction. The collective sale committee may, within 10 weeks from the close of the public tender or public auction, enter into a

private contract with a purchaser for the sale of all the lots and common property in a strata title plan(LTSA)(Third schedule)(11).

2. 7 Extraordinary general meeting

EGM is held in between AGMs[8], if there are matters which urgently require the MC's decision, the management council can call for EGM.

The council must call and hold an EGM within six weeks if it receives a written request from one or more persons entitled to vote who hold at least 20 percent of the aggregate share value of all the lots; or not less than 25 percent of the total number of subsidiary proprietors of the lots.

If the council does not within 14 days after the date of the deposit of the requisition proceed to convene a meeting, the requisitionists, or any one of them representing more than 30 percent of the total voting rights, may themselves convene a meeting within three months from the date. The Management Corporation is liable to pay for a reasonable expenses incurred in convening the meeting (LTSA) (Second schedule) (Section 84).

2. 7. 1 General meetings convened by collective sale committee

The collective sale committee shall convene one or more general meetings of the management corporation in accordance with the Second Schedule for the purposes of whether to consider the appointment of any advocate and solicitor, en bloc lawyer, property consultant or marketing agent; the apportionment of sale proceeds; the terms and conditions of the collective sale agreement; update on the total number of subsidiary proprietors who, immediately before the date of the general meeting, have signed the

collective sale agreement; to provide information of the sale proposal, sale process and the information on the number of offers received for the collective sale, sale proceeds and distribution methods; and also to consider the terms and conditions of the sale and purchase agreement (Third schedule)(7).

Chapter 3. 0 Case Studies – Horizon Tower

3. 1 Case Summary

3. 1. 1 Introduction for Horizon Tower

The case of Horizon Tower saga illustrates some of the loop-holes on the en-bloc scheme. This has been one of the most dramatic and long drawn out en bloc battles in Singapore`s history. Although there were many such cases, Horizon Tower saga stands out from the others as the most appropriate example we could study.

3. 1. 2 Review of Case

The first factor of the case was that the chairman of the management council and the assistance of substantial financing failed to declare their purchase of additional units in Horizon Towers before they were appointed into the sales committee.

Secondly the appointed marketing agents from First Tree Properties were eager to seal a deal before its mandate as marketing agent expired. They did not give professional advice to the sale committee and did not follow up on another offer from vineyard that was much higher than the initial offer.

Thirdly Strata Title Board did not consider the fact of whether there is a possible conflict of interest in the sales committee members as the members themselves bought additional unit and ignore the offer that was much more of a higher price, which was the best one 'reasonably obtainable'.

For the buyer, HPL sued the sale committee and the majority for failing to file a proper application to the STB.

Finally, the minority owners challenge the sale by appealing to court. The Court of Appeal reversed the sale of Horizon Towers, ending a 2 1/2-year battle over the estate's collective sale. Detail of the case will be provided in the following section.

3. 2 Particulars of development & condition of site

Photo by author

Horizon Tower is situated at 15 Leonie hill roads, in a prime residential district 9 of Singapore, built at 30 years ago. It comprises of 210 apartments in two residential apartment blocks of west wind and east wind. When the flats were sold about 28 years ago, each of the owners was granted a leasehold tenure of 99 years. Freehold interest in the land was, however, retained by the developer Horizon Towers Private Limited.

Based on our study, the building last renovation was on 2000. Currently the entire estate was in a poor state of repair. The estate was in a need to be upgraded throughout to comply with the satisfactory-and-modern day standards as the development at Horizon Tower was constructed approximately 30 years ago. Therefore, we can understand that a number of

the facility might have been at the end of their useful life cycle due to general wear and tear and it was likely that the state of building is able to meet the requirements of the Singapore authority.

3. 3 Reason for en bloc sale

One main reason for Horizon Towers to go for the en bloc sales was the higher development densities for land under the new (URA, 1994). In 1994, under the river valley DGP[9], the government revised the horizon tower Gross plot ratio to 2. 8. Comparing with the current GPR of 2. 072 which is where Horizon Tower stands, there is a 38. 4% of increase on the plot of land. Based on some study, the developer have a chance to request URA to revise the GPR to 3. 1 – 3. 28. Approximately 250 units of new flats each of about 2100 square feet can be built on the land, contrasted with the existing 210 units.

3. 4 Judge decision on horizon tower case

Chief Justice Chan Sek Keong and Judges of Appeal Andrew Phang and V. K. Rajah found that the condo's sales committee had breached its duties to unit owners and that the Strata Titles Board (STB) and High Court judge Choo Han Teck had erred in allowing the sale.

Where the sales committee erred

By not acting with due diligence and transparency in appointing the marketing agent, First Tree Properties, which has two shareholders, neither of whom is a licensed valuer. The appointment was done in haste and 'reflected a lack of conscientiousness';

By failing to follow up on a higher offer for Horizon Towers made by Vineyard Holdings, a Hong Kong company;

By not using the Vineyard offer as leverage in negotiations with Hotel Properties Ltd (HPL), the eventual buyer of the estate;

By not getting advice from an independent property expert prior to the sale;

By proceeding with the sale to HPL in 'undue haste' in a soaring property market;

By ignoring conflicts of interest. Two of the sales committee members – Mr. Samtani and Mr. Tan – had bought additional units in Horizon Towers with the help of 'substantial' bank loans right before they were appointed to the committee. They did not disclose these purchases. First Tree was also eager to seal a deal before its mandate as marketing agent expired;

By not consulting, or even updating, the majority owners on the sale, despite knowing that the property boom had pushed up the market value of the individual units and significantly eroded their estimated premiums from the collective sale.

Where the STB erred

By refusing to subpoena Mr. Arjun Samtani to testify;

By allowing the sales committee to assert 'legal privilege', that is, to not divulge the advice it had received from its lawyers;

By not considering whether there was a possible conflict of interest in the sales committee members' purchase of additional units;

By not asking whether the price was the best one ' reasonably obtainable';

By concluding that the original sales committee had ' acted in good faith' in selling the property to HPL just because the committee had received and relied on legal advice.

Where Justic Choo Han Teck of the high court erred

By taking a ' restricted view' of the duties of a Strata Titles Board in approving a collective sale;

By deciding that the only issue to rule on was that of price, and that the STB had determined the price was fair.

By The Straits Times, Apr 05, 2009

Detail on Judge Decision See Appendix 3

3. 5 Problems identified

3. 5. 1 Time Problem

The pricing on the sale was advice by the First Tree Properties on April 2006. But the sale was actually confirmed on January 2007. The valuation itself was outdated and does not reflect the market price of the site. The new valuation report is then done after the developer accepted the deal.

3. 5. 2 Momentary problem

The sale committee and the marketing agent did not consider the higher bidder when the developer, Vineyard offered a much higher price for the en bloc sale. This was a breach of the duty of good faith. Prior to that, the marketing agent also did not advise the sale committee on the option of another price for the sale. Referring to (LTSA) good faith” in s 84A (9) (a) (i) (A) this is not merely confined to whether the sale price is fair or not, but also how the price is arrived at.

The marketing agent from First Tree Properties wanted to complete the whole process as their mandate for property agent will be expired soon. Therefore, they ignored the Vineyard offer which is higher than the initially agreed price with HPL. One of the main reasons is that they get their salaries from the sale, which have nothing to do with the choice of buyer.

3. 5. 3 Problem with the Procedure

With reference of the case, one of the problems of the procedure is that the sale committee did not get advice from any independent property expert prior to the sale. They did not consult or update the majority owners on the current situation of the sale, despite knowing that the property boom had pushed up the market value of the individual units and therefore, significantly eroded their estimated premiums from the collective sale.

3. 5. 4 Problem in the Sale Committee

The Sale Committee actually breached all the duties under the rules and regulations of Strata Tile Board. They are:

(a) The duty of loyalty or fidelity;

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- (b) The duty of even-handedness;
- (c) The duty to avoid any conflict of interest;
- (d) The duty to make full disclosure of relevant information; and
- (e) The duty to obtain the best price for the properties of the subsidiary proprietors

During the en bloc process, the Sales Committee member actually purchased an additional unit in Horizon Tower without declaring this piece of important information to the subsidiary proprietors in conjunction of their second breach of duties, ignoring the Vineyard offer.

Strata title board has made a mistake on allowing the sales committee to assert ' legal privilege', that is, to not divulge the advice it had received from its lawyers. The STB failed to question the sale committee on whether the price offered was the best one ' reasonably obtainable'.

The board of Horizon Tower has applied wrong legal test for conflict of interest. The correct question to ask was whether there was a possible conflict of interest, concluding that the original SC had acted in good faith in selling the Property to HPL.

Chapter 4. 0 – Problems and Implications of En Bloc

4. 1 Minorities Rejecting the En Bloc

Usually, in en bloc sale, there are always unhappy owners who appeal to the court for objection to the en bloc sale. They are the minorities in the en bloc

sale. They are the owners who are being forced by the majority to go for the en bloc because of the 80 percent and 90 percent consent rule.

The sale of the en bloc might be affected because of the minorities. The time taken for the en bloc sale to proceed may be delayed because of the minorities challenging the authority on the en bloc sale. The money involved in the beginning phase of en bloc and the opportunity cost that the developer had will be lost if the minorities successfully reversed the sale (Christudason, 1998).

Originally, as stated from (Strata Title Board, 84(A)(4), 84D(3), 84E(5) and 84FA(2), owners can raise objection to the en bloc sale if the owners satisfied the requirements set by the board. We can see that objection or the approval of the en bloc is handle by STB, but still, from the case of Horizon Tower, owners took the case to the court, which involves a great deal of time, money and effort. This somehow becomes one of the risks that developers would need to consider.

4. 2 Pro En Bloc Subsidiary Proprietors

Pro En Bloc subsidiary proprietors are the owners that are very supportive of the en bloc and their aim is to get the majorities support in the en bloc sale, regardless of the interest of the minorities.

They are known to run the estate down, exaggerating defects in the estate, making majorities thinking that the estate is not appealing at all and en bloc shall be the only solution. These committee may even increase maintenance fees/sinking fund contributions to pressure the other owners to sign the Collective Sale Agreement.

Relationship strained between neighbours, properties and assets owned by the owners are being damaged, owners suing each other as their patience starts to run out. This implication shows the ugly side of en bloc.

What we are considering as a solution to this situation is that owners of the majority which have given consent to the en bloc, especially the sale committee should take time to follow up with the minorities whom have not given consent to the en bloc. Solutions to the problem of minorities can create a better relationship between the owners and this can ensure that the en bloc process may be smoother and easier.

4. 2 Property Prices

When an owner received its portion of the sale proceeds from the en bloc sale, most of the owners would have earned a profit from the sale. But problem arises when owners find themselves having trouble of buying back the same unit on the same land after the redevelopment of the land. The prices of the property or land now increase much more than what the owners have earned from their profit from the sale, therefore forcing the owners to look for other private properties which they can afford or to change their target to government flats, HDB. (Fiona Chan & Joyce Teo, 2007, the Straits Time)

Referring to the case of Horizon Tower, this scenario became one of the possible reasons that why the owners whom have agreed with the en bloc decide to default the en bloc sale. First, as more estates are snapped up at ever-rising prices, selling your home too early may mean a lower payout, as the owners of Horizon Tower discovered to their chagrin.

“ When they sold their development in January for \$500 million, it was the biggest en bloc deal ever, netting most owners \$2. 3 million each.

But barely three months later, Grange ford Apartments next door – with mainly smaller units – went on the market at a price that would yield each unit owner at least \$3 million.” (Fiona Chan & Joyce Teo, 2007, the Straits Time)

This simply means that the owners in Horizon Tower felt short-changed because of the market fluctuations for properties. It is very difficult to anticipate the real estate market.

Under the new