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**SMART HOME' IN THE STATUTORY HOUSING SALE
AGREEMENTS IN MALAYSIA?**

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Abstract

Today's 'smart home' is a popular notion referring to houses provided with automation and technological devices. The purpose of 'smart home' is to enhance safety and security and to provide environmental friendly and energy saving houses for benefit of the home owners/users. Insofar as the situation in Malaysia is concerned, there is no official definition of 'smart home'. Neither is there any legal and administrative policy on it. Likewise there is no specific law governing 'smart home'. Thus, the definition and governance of smart home is unclear. This paper aims to discuss 'smart home' vis-à-vis the terms and conditions in statutory housing sale agreements in Peninsular Malaysia. This paper uses legal and qualitative social research methodologies to examine the features and issues of 'smart home' under the said housing sale agreements. The outcome of this paper can help policy makers to shape up and improvise the legal features and characteristics of 'smart home' in Malaysia.

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Keywords: Statutory housing sale agreement, smart home, features, issues.



1. Introduction

It is a trite law that every licensed housing developer in Peninsular Malaysia must use the statutory housing sale agreements in the Schedules G, H, I or J, as the case may be. This responsibility is mandatory for all licensed housing developers in Peninsular Malaysia. This responsibility is spelt out in regulations 11A and 11B of the Housing Development (Control & Licensing) Regulations 1985.

The contents of these schedules are terms that protect the interests of the purchasers and the developers as well. For instance, the developer is under a responsibility to provide Certificate of Fitness of Occupation (CF) or Certificate of Completion and Compliance (CCC), as the case may be, before the purported completed house can be handed over to the purchasers. On the other hand, the purchaser is under an obligation to repay all claims of the developer progressively in accordance with Schedule 3 of the respective schedules.

The obligation of the licensed housing developers to apply the statutory housing sale agreements is also supported by the principles decided in *Rasiah Munusamy v Lim Tan & Sons Sdn Bhd* [1985] 2 MLJ 291 (Supreme Court), *SEA Housing Corp Sdn Bhd v Lee Poh Choo* [1982] 2 MLJ 31 (Federal Court), *Kimlin Housing Development Sdn Bhd (Appointed Receiver and Manager)(In Liquidation) v Bank Bumiputra (M) Bhd & Ors* [1997] 2 MLJ 805 (Federal Court), *MK Retnam Holdings Sdn Bhd v Bhagat Singh* [1985] 2 MLJ 212 (Supreme Court), *Cemerlang Land Sdn Bhd v Ali bin Saat & Anor and other appeals* [2018] 1 MLJ 331 (Court of Appeal at Putrajaya), *Simpang Maju Enterprises Sdn Bhd v Soh Yen Ling (representative to Chau Yau Seng, deceased)(Malayan Banking Bhd, third party)* [2017] 10 MLJ 648 (High Court of Malaya at Melaka); *Bodco Engineering and Construction Sdn Bhd v Tribunal For Housing Purchaser Claims & Ors* [2017] 4 MLJ 501 (Court of Appeal at Kuching), *Yew Hong Teng & Anor v TTDI Jaya Sdn Bhd* [2016] 11 MLJ 173 (High Court of Malaya at Shah Alam), *Yee Hock Lai & Anor v Unity Performance Sdn Bhd & Anor* [2014] 1 MLJ 187 (Court of Appeal at Putrajaya), *Terang Tanah Sdn Bhd & Anor v Chong Choy Lin* [2014] 5 MLJ 594 (Court of Appeal at Putrajaya), *ABT Construction Sdn Bhd & Anor v Tribunal Tuntutan Pembeli Rumah & Ors* [2013] 9 MLJ 193 (High Court of Malaya at Penang), *Lembaman Development Sdn Bhd v Ooi Lai Yin & Anor and other cases* [2016] 7 MLJ 261 (High Court of Malaya at Penang), *Prestaharta Sdn Bhd v Ahmad Kamal bin Md Alif & Ors* [2016] 4 MLJ 39 (Court of Appeal at Putrajaya) and *Encony Development Sdn Bhd v Robert Geoffrey Gooch & Anor* [2016] 3 MLJ 400 (Court of Appeal at Putrajaya).

In *Rasiah Munusamy v Lim Tan & Sons Sdn Bhd* [1985] 2 MLJ 291(SC), the appellant purchaser alleged that the respondent vendor orally agreed to sell and transfer to the appellant a double storey terrace house which the respondent vendor undertook to build. The respondent vendor alleged that the oral agreement was not valid under rule 12(1) of the Housing Developers Rules 1970. The learned trial judge in the High Court held that since only the method or mode of entering into the agreement was in contravention of the law, the verbal agreement was valid and enforceable. Likewise, the Supreme Court, in relation to the enforceability of the oral agreement, held, *inter alia*, that, although the oral agreement did not comply with the provision of rule 12(1) of the Housing Developers (Control and Licensing) Rules 1970, the appellant purchaser clearly belonged to a class for whose protection the statutory prohibition was imposed and as such the appellant could enforce his right for specific performance of the oral contract of sale provided he was a *bona fide* purchaser. Secondly, the Supreme Court opined, in the

circumstances of this case, the appellant purchaser could not be said to be a *mala fide* purchaser. He could not be deprived of the protection given by the housing developers' legislation nor was there justification in holding that the appellant purchaser had used the housing developers' legislation as an engine of fraud. The appellant purchaser has not perpetrated any fraud, legal or equitable, and his claim for specific performance should have been granted. Mohamed Azmi SCJ in this case said at pages 294–295:

*“Going back to the dispute on the validity and enforceability of the oral agreement under the Housing Developers legislation, the law on this point as a general rule is that although no action can arise from a prohibited and illegal act, if a plaintiff can show that he is a member of the class for whose protection the statutory prohibition was imposed, then as an exception such a person can enforce rights or recover property transferred under the illegal transaction ... Similarly, in the present appeal, the oral agreement entered into between the purchaser and the vendor is prohibited by Rule 12(1) of the Housing Developers (Control and Licensing) Rules 1970 which requires “every contract of sale shall be in writing”, and Rule 17 provides penalty to any licensed Housing Developer who contravenes any of the provisions of the 1970 Rules. Now, what is the nature and objective of the Housing Developers legislation? As stated by Sir Garfield Barwick in *Daiman Development Sdn Bhd v Mathew Lui Chin Teck* [1981]1 MLJ 56, 60, “Nothing in the rules expressly purports to invalidate a contract which does not comply with the provisions of the rules **In our judgment although the oral agreement does not comply with the provision of Rule 12(1), the purchaser clearly belongs to a class for whose protection the statutory prohibition is imposed and as such the purchaser can enforce his right for specific performance of the oral contract of sale provided he is a bona fide purchaser ...** In normal circumstances, these allegations if unexplained would be sufficient to satisfy us that the purchaser is not a bona fide buyer and therefore would render the oral agreement unenforceable. But having regard to the whole evidence and in the light of our conclusion that the learned Judge was correct in holding that the repudiation of the contract is not valid, the impact of these four allegations has been whittled down to the extent that we are satisfied that this is merely a case of the pot calling the kettle black. We are of the view that the vendor is guiltier of the alleged unconscionable conduct assuming for one moment that such conduct is indeed unmeritorious and unconscionable. **On allegation (a) that the oral agreement was at the behest of the purchaser, the simple answer to that argument is that the responsibility of having the contract in writing lies on the vendor as licensed Housing Developer. This is clear from Rules 12(1) and 17. It is for the vendor to insist on the written agreement. The fact that the idea of having no written agreement had originated from the purchaser for whatever reason, does not relieve the vendor from prosecution under Rule 17. The legislature has placed on the developer rather than the buyer the responsibility of ensuring compliance with the Rules which inter alia includes the requirement of the contract to be in writing failing which the developer is liable to prosecution. In the circumstances, we do not think that ground (a) would make the purchaser a mala fide buyer”** (emphasis added).*

Parliament enacted the Housing Developers (Control and Licensing) Act 1966 (Act 118) (“Act 118”) for the purpose of protecting the rights of the purchasers. In addition, the current aims of Act 118, as enshrined in the preamble and the long title of Act 118, reads as follows: “An Act to provide for the control and licensing of the business of housing development in Peninsular Malaysia, the protection of the interest of purchasers and for matters connected therewith”.

In this respect also, Richard Talalla J in *Limmewah Development Sdn Bhd v Dr Jasbir Singh s/o Harbhajan Singh* [1993] MLJU 296 (High Court of Malaya at Muar) said at page 7 of the judgment as follows:

“There is ample authority to indicate that the Act was passed to protect buyers, often individuals with limited financial resources, from victimisation by developers who usually have far more financial resources than the buyers. It was stated by Suffian L.P. in the S.E.A. Housing Corporation case that a developer cannot contract out of the obligations placed upon him by the Act and regulations made thereunder. Thus the Developer whilst free to bind himself to terms outside the contract such as the terms imposed by Government in this case was not free to do so in breach of the Developer’s obligations under the contract. Accordingly it seemed to me that the Developer was duty bound either to fit whatever he undertook outside the terms of the contract within his obligations under the contract or alternatively, independently of such undertakings, the Developer should have honoured his obligations under the contract and having done so then gone ahead to seek payment or other remedy flowing from that which he so undertook” (emphasis added).

1.1. Statutory Housing Sale Agreements

The statutory housing sale agreements are in the forms of Schedules G, H, I and J, viz:

- 1) Schedule G: This schedule is introduced by regulation 11(1) of Regulations 1989 (P.U. (A) 58/1989). Schedule G is for sale and purchase of landed houses (land and building) by way of “full sell then build” concept;
- 2) Schedule H: This schedule is introduced by regulation 11(1) of Regulations 1989 (P.U. (A) 58/1989). Schedule H is for the sale and purchase of flat houses (building and land intended for subdivision into parcels) by way of “full sell then build” concept;
- 3) Schedule I: This schedule is introduced by sub-regulation 11(1A) of the Regulations 1989, inserted by regulations 15 and 8(b) of the Housing Development (Control and Licensing) (Amendment) Regulations 2007 (P.U. (A) 395/2007). Schedule I is for sale and purchase of landed houses (land and building) by way of “build then sell” concept;
- 4) Schedule J: This schedule is introduced by sub-regulation 11(1A) of the Regulations 1989, inserted by regulations 15 and 8(b) of the Housing Development (Control and Licensing) (Amendment) Regulations 2007 (P.U. (A) 395/2007). Schedule I is for sale and purchase of flat houses (building and land intended for subdivision into parcels) by way of “build then sell” concept;

Vide statutory amendment – the Housing Development (Control and Licensing) Act 1966 Housing Development (Control and Licensing) (Amendment) Regulations 2015 (P.U. (A) 106), enforced from 1 June 2015, some new terms have been incorporated into Schedules G, H, I and J ('the said agreements'). Now, the said agreements contained terms as prescribed under P.U. (A) 106.

2. Problem Statement

'Smart Home' refers to modern houses equipped with technological devices to ensure safety, security, environmental friendly and saving energy to home users/owners. It is a contemporary popular notion in housing industry. In Malaysia, this house concept is at its nascent stage and is growing popular. Nonetheless, as a corollary, arguably there is no unequivocal term found in the statutory housing sale agreements in Schedules G, H, I and J under the Housing Development (Control and Licensing) Regulation 1989 that prescribe and spell out 'smart home' features, characteristics and legal liability. The issue is whether the arguable absence of 'smart home' terms in these statutory housing sale agreements can be detrimental to the house purchasers? Thus, it is submitted that this lacuna may cause unfair result to the public purchasers.

3. Research Questions

1. Whether there exist terms of 'smart home' in the said agreements?
2. If they do, what are the features, characteristics and legal liability that the 'smart home' clauses provide?
3. If they do not, whether it is warranted that specific term prescribing 'smart home' be provided in the said agreements?
4. What are the issues concerning 'smart home' in Malaysia?
5. How to tackle issues in 'smart home' in Malaysia?

4. Purpose of the Study

This paper analyses the latest amended Schedules G, H, I and J pursuant to P.U.A 106 enforced from 1 June 2015. The aim of this paper is to analyse the amended terms and conditions of the said agreements insofar as the terms on 'smart home' is concerned. Further this paper intends to identify issues relating to the terms and application of 'smart home' in Peninsular Malaysia via scrutiny of the said housing sale agreements and through field work research data. This follows by some recommendations to address the issues identified for the benefit of purchasers.

5. Research Methods

The research method that is used in this paper is purely legal research methodology supported by data obtained from interviews with relevant persons dealing with 'smart home'

6. Findings

6.1. Definition of 'Smart Home'

There is no official and legal definition on 'Smart Home'. Nonetheless, there are various definitions on this word provided by many sources. The authors only choose a few definitions of 'smart home' based on the internet sources and from interviews with relevant persons in 'smart home'.

According to Smart home USA (Smart Home USA, 2017):

*"A Smart Home is one that provides its home owners **comfort, security, energy efficiency (low operating costs) and convenience** at all times, regardless of whether anyone is home.*

*"Smart Home" is the term commonly used to define a **residence that has appliances, lighting, heating, air conditioning, TVs, computers, entertainment audio & video systems, security, and camera systems** that are capable of communicating with one another and can be controlled remotely by a time schedule, from any room in the home, as well as remotely from any location in the world by phone or internet."*(Emphasis added).

While according to Smart Home Energy (Smart Home Energy, 2017):

*"A smart home, or smart house, is a home that incorporates **advanced automation systems to provide the inhabitants with sophisticated monitoring and control over the building's functions**. For example a smart home may control lighting, temperature, multi-media, security, window and door operations, as well as many other functions."*(Emphasis added).

On part of the professional persons dealing with 'smart home', according to Puan Mahanum binti Kusnin an officer from Department of Building Control, Majlis Perbandaran Sepang, insofar as the situation of Cyberjaya is concerned, 'smart home' refers to houses that are provided with electronic security system. For an instance the provision of CCTV for security purposes, intercom communication and remote sensor for facility of the home users. Puan Mahanum Kusnin said (M, Kusnin, personal communication, June 11, 2017):

"...smart house in Cyberjaya with technological system is actually more than using electronic technology. This was the initial understanding of smart home's definition. Smart home in Cyberjaya was firstly introduced in 2000. It was more on using electronic elements, I mean in term of its security system, that is to say it has CCTV. The smart home then was provided with CCTV and having a 24-hour security guard. The additional features of smart home are – having intercom, that can be controlled at home and at the control office. Further, smart home was later improvised with sensors, sensory system at its windows and doors, all of which can be controlled by phone. These are some initial proposed features of smart home ... Smart home that can be controlled by smart phone. Actually smart home is an ordinary house but supported with additional technological systems and sensory

system. Initially, this smart home concept was practical, people were at ease of using it ... with the technological system introduced. But since the earlier part of 2000, if I am not mistaken in 2002-2003, and now is already 2017, I do not see many people using smart home features. If the first proprietor of the house sold the house, the second proprietor and the third proprietor do not maintain the smart home system” (emphasis added).

Further according to Encik Jamaludin Jupir, Senior Manager of UEM Sunrise Berhad, ‘smart home’ refers to houses that provide convenience at the home users’ fingertips. It is convenient to the home-users to access the houses and manage the electricity and facility of the houses. He said:

“So definition of our smart home is (to) provide convenience at your fingertip. Convenience at the finger tips. Convenient to people to access the house, manage the electrical or home other facilities. So what is the component? So far there is no one writes about definition of smart home. For us, smart home component is that everything at your fingertips.”(emphasis added).

Finally according to Mr. Alexander Selvaraj, a Property Manager to Benz & Carlton Sdn Bhd, the meaning of ‘smart home’ is as follows:

“to me, as I mentioned, smart home is whole facilities of... I would say facilitating the home users. That is put inside the house, but is under a control by intelligent devices. For example like alarm, or CCTV. So, for an example if a person’s alarm is triggered due to passerby movement, the CCTV will capture it, it links to the alarm system, which will notify the owners’ unit, the owners’ handphone. Further, it involves intercom, then, smart light control. If there’s no movement, no nothing at all, the light turns off automatically. Air-condition turned off automatically. Those kinds of feature. That’s how much I understand it. So this is the limit of smart home, they have here right now. That they are using it. Smart home yes, is powered by IBM Mesin Niaga, IBM also is the one who brings smart home system into Malaysia.”(emphasis added).

To recapitulate, in the authors’ opinion, ‘smart home’ is houses that use modern technology that provide facility to ensure safety, security, cost efficient and environmental friendly to the home users.

6.2. Whether The Terms In The Said Agreements Contain ‘Smart Home’ Provisions?

The pertinent issue is this: whether there are terms in the said agreements that spell out the provisions of ‘smart home’?

By and large, it is the contention of the authors that, the terms in the said agreements contain ‘smart home’ elements. For instance:

1) Clause 15 of Schedule G, clause 14 of Schedule H, Clause 15 of Schedule I, - Materials And Workmanship To Conform To Description.

These clauses state the duty of the developers to ensure that the materials and workmanship of the house building are in accordance with the description as spelt in the approved building plans and

planning permission. These are provided in the attached the First Schedule, Second Schedule (copy of approved building plan attached), Third Schedule (Schedule of Payment of Purchase Price), Fourth Schedule (Building Description) of Schedule G and other Schedules in Schedules H, I and J.

For an example clause 15(1) of Schedule G states as follow:

15. (1) The said Building shall be constructed in a good and workmanlike manner in accordance with the description set out in the Fourth Schedule and in accordance with the plans approved by the Appropriate Authority as in the Second Schedule, which descriptions and plans have been accepted and consented by the Purchaser, as the Purchaser hereby acknowledges.

This term imposes a duty of housing developers to provide houses that contain materials and workmanship conforming the approved building plans and planning permission i.e. the building law and planning law. It is submitted, this term is to ensure that the materials and workmanship of the house are safe and suitable for human habitation.

2) Clause 25 of Schedule G, clause 26 of Schedule H, clause 25 of Schedule I - **Developer to obtain the certificate of completion and compliance.**

For an instance, clause 25 (1) of Schedule G provides as follows:

The Developer shall, at its own cost and expense, duly comply with all the requirements of the Appropriate Authority which are necessary for the issuance of the certificate of completion and compliance in respect of the said Building.

Similar to the above, this term is to ensure that the materials and workmanship of the house are safe and suitable for human habitation.

3) Clause 26(1) (2) of Schedule G, clause 27 (1) (2) of Schedule H, clause 26(1) (2) of Schedule I and clause 26(1) (2) of Schedule J - **Manner of delivery of vacant possession.**

For an instance, clause 26 (1) of Schedule G provides as follows:

The Developer shall let the Purchaser into possession of the said Property upon the following:

1. the issuance of a certificate of completion and compliance;
2. water and electricity supply are ready for connection to the said Building;
3. the Purchaser having paid all monies payable under subclause 5(1) in accordance with the Third Schedule and all other monies due under this Agreement and the Purchaser having performed and observed all the terms and covenants on his part under this Agreement; and

4. the completion of any alteration or additional work under subclause 16(2),
if any.

While, clause 26(2) of Schedule G states as follows:

Likewise, the above term is to ensure that the materials and workmanship of the house are safe and suitable for human habitation.

It should be noted that the materials and methods of construction of building and land development must be in accordance with the requirements set out in the written law relating to planning and building such as the Street, Drainage and Building Act 1974 (Act 133)(applicable only in Peninsular Malaysia i.e. West Malaysia), Uniform Building By-Laws 1984 and Town and Country Planning Act 1976 (Act 172).

The purpose of Act 113 is to provide a uniform system with respect to street, drainage and building in local authority areas in Peninsular Malaysia. This is spelt out in the Preamble of Act 113. The law governing street, drainage and building is provided under this act. The responsible body to ensure the compliance of this act is the local authority.

The followings are examples of the relevant laws under Act 113:

- 1) The duty of the local authority to maintain and repair public streets is provided under section 4 of Act 133.
- 2) The duty of the local authority to construct and maintain drains and water-courses is provided under section 50 of Act 133.
- 3) The right of the local authority to acquire land for back lane under section 65 of Act 113.
- 4) Responsibility of all persons to get approval from the local authority before carrying out any earth works as prescribed under section 70A of Act 133.
- 5) Responsibility of the developer to prepare the building plan for approval of the local authority as required under section 70 Act 133.

While the law that specifically governs building is the Uniform Building by Laws 1984 (G.N. 5178/84) (Act 113)(‘UBBL’). This by law is made pursuant to section 133 of the Act 133, which gives power to the state to enact specific laws relating to building. Among the relevant building laws under UBBL, among others, are:

- 1) The responsibility of the qualified person to submit to the local authority the building plan for approval pursuant to by law 3 UBBL.
- 2) The responsibility of the qualified person to provide Certificate of Completion and Compliance (CCC) for singly built detached house when all the conditions are met pursuant to by-law 25A of the UBBL.
- 3) The responsibility of the developer to ensure natural lighting and ventilation in accordance with by-law 39 UBBL.

- 4) Building material and method of preparing building material must comply with the Standard Specification and Code of Practice in accordance with by-law 53 UBBL.
- 5) Building site must be approved in accordance with by-law 81 UBBL.
- 6) The responsibility of the developer to comply with the Malaysian standard specification and code of practice in building construction as required by by-law 257 UBBL.

The law that governs town and country planning is the Town and Country Planning Act 1976 (Act 172). This statute is applicable in the states of Malaya i.e. Peninsular Malaysia pursuant to the Preamble of Act 172. Among the laws that this statute provides are:

- 1) The requirement to obtain planning permission before housing developer can commence any housing development. This is provided under section 19 of Act 172.
- 2) The requirement to apply planning permission in accordance with the conditions prescribed under section 21 of Act 172.
- 3) Housing developers are prohibited from carrying out any development except planning permission has been granted by the planning authority. This is stated under section 20 of Act 172.
- 4) The approval of the application for planning permission is subject to, *inter alia*, the direction of the State's Planning Committee agreement, the provisions under the development plan, the provisions under the Sewerage Services Act 1993, the development proposal, the provisions under the Solid Waste and Public Cleansing Management Act 2007 (Act 672). This is provided under section 22 of Act 172.

It should be noted that in approving application for planning permission and approved plans including building plan, support from relevant technical agencies are sacrosanct for the approval. These technical agencies will look into the purported application as to whether the proposed development complies with the professional requirements such as on the issue of safety, security, cost efficient and environmental suitability. Examples of the technical agencies include Land and District office, TNB Berhad, Lembaga Lebuhraya Malaysia, Department of Sewerage Service (Jabatan Perkhidmatan Pembentungan), Public Work Department - Jabatan Kerjaraya (JKR), Department of Environment, Indah Water Sdn Bhd, Polis Di Raja Malaysia (PDRM), Department of Education, Fire and Rescue Department (Bomba), water authority and Irrigation and Drainage Department (Jabatan Pengairan dan Saliran) etc (Md Dahlan, 2009; Md Dahlan, 2010; Md. Dahlan, 2014; Md Dahlan, Mohd Noor & Shuib, 2017a; Md Dahlan, Mohd Noor & Shuib, 2017b; Md Dahlan, Shuib & Mohd Noor, 2017; Md Dahlan, Abdul Jalil, Zainol & Maamor, 2016; Md Dahlan & Masum, 2014; Md Dahlan, 2014).

Thus, in the opinion of the authors, planning permission, approved plans and CCC will not be granted until and unless the professional technical agencies have supported the respective applications. Thus, the issues pertaining to safety, security, cost efficiency and environment consideration have been duly addressed. Thus, it is not exaggerated to state that housing development projects in Malaysia are fully 'smart homes'.

6.3. Issues

There are issues on smart home devices that are provided in housing development projects in Malaysia. For example, in Symphony Hill Residence, Cyberjaya, the authors have identified the following issues:

- 1) The particulars of smart home devices such as CCTV, router, automatic light control, alarm system, remote control, sensor, intercom and video conference facility are not provided in the housing sale agreement particularly in the schedules listing the facilities provided in the house. For example in a smart home project at Symphony Hills Residence at Cyberjaya developed by UEM Sunrise Berhad, there is no term providing smart home devices and facilities as well their warranty in the house agreement. What is clear, only the brochure of a housing development that had stated the provision of smart home facilities in general information. This *lacuna* may open to fraudulent practices for instance, the developers only provided devices of low quality and prone to damage and there is no warranty and no liability of the developer to repair or replace any defective devices and facilities. This is evident in an interview with Mr Lim Yu Lian, a house owner and being the JMB's Chairman in Symphony Hills Residence at Cyberjaya. Nonetheless, according to Mr Alexander Selvaraj of Benz & Carlton Sdn Bhd, property manager of Symphony Hills Residence, there is two years defect liability period for smart home devices and facilities (Alexander Selvaraj, personal communication, May 24, 2017; Jamaludin Jupir, personal communication, May 17, 2017). After defective liability period expires, the cost of repair and maintenance is borne by the house owner.
- 2) The smart home devices are provided with limited year of warranty for example within 2 years. After which, if the devices are malfunctioned, the home owner has to bare his own cost to replace and repair. Below is the excerpt of an interview with Mr Lim Yu Lian.

“Associate Professor Dr. Nuarrual Hilal Md Dahlan: have warranty?”

Mr Lim Yu Lian: 2 years. Not in S&P. Its general defect is 2 years. Smart home actually they give warranty to developer but I don't know they give us letter or not. Normally the developer sub to the main contractor it will sub sub to do the thing. Sub-contractor will give warranty to main contractor and forward to developer to keep a copy only. If good developer should attach in the house rule.

Associate Professor Dr. Nuarrual Hilal Md Dahlan: it should be under the developer obligation to be responsible if the smart home gadget is not functioning...

Mr Lim Yu Lian: I don't think so. They will put clause, normally just warranty defect liability only.”

- 3) The maintenance of smart home devices are costly. Normally, the developer will not responsible to cover the cost after the expiry of defective liability period. Thus, the home user has to bare his moneys to repair or maintain the facilities. As a result, many smart home owners do not use the

smart home facilities and gadgets and revert to manual setting. Further, after defect liability period expiry, 50% of the occupants in Symphony Hills Residence do not resort to smart home devices. Instead they are comfortable to use manual setting, not automation. The reason behind this is due to malfunctioning of the devices (low quality) and the expensive maintenance costs. (A. Selvaraj, personal communication, May 24, 2017). However, according to Jamaludin Jupir, the smart home devices are approved by SIRIM (J. Jupir, personal communication, May 17, 2017)

The issue of tampering with the smart home devices also poses a problem to the home owners. Thus, the security and safety of home users may not be guaranteed. According to Alexander Selvaraj, in one housing project – Garden Residence, the thief was able to manipulate, temper and hack the alarm system, electricity and the alarm sensor and robbed the houses. The thief entered the house through the fence, by-passed the house alarm sensor and the alarm sensor did not trigger, even though the CCTV caught it (A. Selvaraj, personal communication, May 24, 2017)

7. Conclusion

7.1. Suggestions And Conclusion

Thus, it is submitted that, the facilities of smart home as prescribed above, are still not provided in the housing sale agreements and that the protection given to the house owners too are not adequate. Further, the maintenance cost and replacement costs for smart home devices also too high for the home user to bear.

It is submitted that, the particulars of smart home devices and facilities should be expressly stated in the housing agreement and that the legal protection to home users over the smart home facilities should be likewise clearly stated in the housing agreement to avoid losses and unfair practice by the developer to the chagrin of the house owners and users. Further, the specifications and descriptions of the smart home devices should be particularized and detailed out to provide adequate information and fair to the home users.

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