



Architect's Certification: A Problem?

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ABSTRACT

Currently the problems of some architects issuing fraudulent progress certificates for Malaysia's housing projects result in many house buyers losing their life savings. Unfortunately, these house buyers still remain contractually responsible for all the associated, present and future financial obligations such as their bank loans. Fraudulent certification is the most frequent incident of complaints amongst the range of problems complained about to the Board of Architects, Malaysia or *Lembaga Arkitek Malaysia* (LAM). This paper highlights the underlying pertinent issues such as when an architect does not fully understand the ramifications, or exercise due care when performing the certifier's role with its inherent responsibilities under the Housing Development Act (HDA) and Housing Development Regulations (HDR). Also at what stage the architect is legally required to issue progressive work completion certificates, particularly the scope ranging from the inception stage through to the completion stage. This includes the relevant housing laws and regulations that enshrine the architects' professional status and confers legal certification duties. This is designed to protect the public interest, yet many architects fail to perform this duty independently, or impartially and fairly to the new house buyers and the public at-large. Recognizing the systemic weakness, the elements that contribute to the fraudulent certification and illustrates how the fraudulent certification exploits the trust of house buyers. In the analysis, a quantitative framework was used to measure, quantify and discuss the best all round outcomes.

1. Introduction

Malaysia is one of the most developed nations in the region, which have shown tremendous economic growth during the post-World War Two decades. The provision of public housing became a high priority to meet Malaysia's essential needs (PEMANDU, 2012; Usilappan, 2013). The seemingly inexorable drift of the rural population to the cities resulted in more than half of that population living in basic apartments, condominiums, terrace houses, semi-detached houses and bungalows, in all of the ever growing urban areas. While these national housing developments enshrine Malaysia's basic living requirements, they also fostered economic growth for the population at large (Radzuan, Hamdan, Hamid, & Halim, 2011). More recently, the new generation of house buyers imposes growing demands for higher housing quality standards. It follows that the roles and responsibilities of the modern architect, as a certifier of compliance and progressive equity value, are also expanding to ensure that the house buyer's interests and reasonable expectations will not be compromised. In practical terms this means the architect shall use his commensurate best endeavors to adequately monitor the construction progress from inception until completion to ensure the building works are built according to the relevant statutory laws and regulations, building plan (BP) and quality specifications in the Sale and Purchase Agreements (SPA) (Buang, 2001; Chan, 2011a; Devarajulu, 2012; Ismail, 2009; LRB, 2010a). Many new housing schemes were developed for the shared benefits of house buyers (Dahlan, 2006). While many of these housing developments were successfully completed and delivered to the house buyers, far too many failed. This caused many house buyers to lose their life saving as they

still had to pay for their serious defective homes or even the abandoned homes (Dahlan, 2007).

In many instances the developer needs to promote and sell his houses before the completion of construction work. In such case, the house buyer signs an SPA with the developer as stated in the HDR (LRB, 2010a). Under the terms of this agreement, the developer is entitled to claim from the house buyers, at each progressive stage work completion, payment which is based on and supported with the architect's stage certificate (Chan, 2011a). The Regulation confers this personal certification power upon the developer's architect. This implies that the architect has, impartially assessed the progressive completion value of the works and issues a certificate (Kasi, 1998). However, this certification procedure has become a major problem in many housing developments, possibly due to this certification power being misused by far too many architects. Subsequently, it has led to fraudulent stage certification problem (Shukor, 2002). The house buyers are duty bound to pay whatever monies are subsequently claimed in accordance with the stage completion certificates, even when the building works are far from reaching the allegedly completed stage value, or at worst, the works are suspended or even abandoned (Hassan, 2011). These problems ultimately contribute an omnipresent dilemma faced by the house buyers.

The fraudulent certification has become a major problem in housing projects, according to Chan (2010a), LAM has received many house buyers' complaints against the architects of these fraudulent certifications comprise 54% in the 1999-2005 period. This is the largest

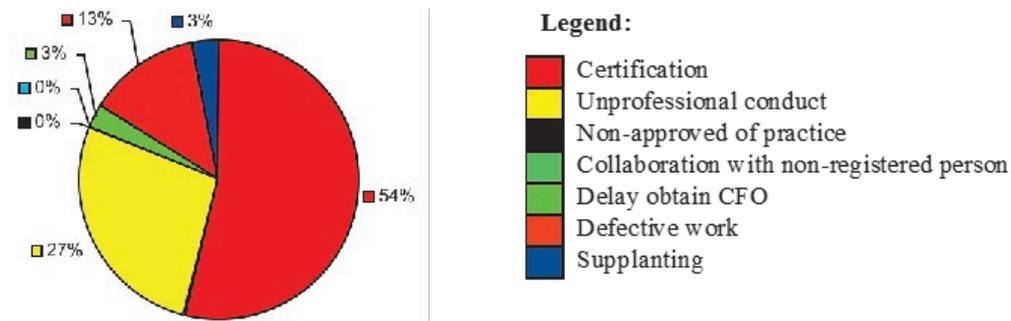


Figure 1: LAM's Statistic Data of Public Compliant against Architects

category of all complaints in housing projects, eclipsing other issues as shows in the figure 1.

Often the architect, especially a newly qualified architect, is not fully aware of his legal responsibilities and his scope of duties (Ho, 2012; Mahamed, 1999). Many cases where although the architects certify and evidence the completion of certain progress developments, but this have not been done honestly. On other words, there are fraudulent practiced by many architects to withdraw the available money in the end financier's hand at the expense of the house buyers (Dahlan, 2006). Worse still, while some housing projects had been abandoned, the house buyers remained obliged to pay the stage progress claim payments as set out in the architect's stage certificates because the bank has paid the developer in accordance with the architect's fraudulent certificates.

This study seeks to address the problem of many architects involved in housing projects, to be familiar with the 'Stage' Certification role and its attendance legal ramifications, hence highlight the problem of fraudulent certification that could compromise the house buyer's interest. Moreover, to identify some elements that could contribute to the fraudulent certification. It would be vetted through all the public complaints cases in LAM's office in order to identify the number of fraudulent certifications as a systemic problem. The use of the quantitative methods is necessary to present a dimensioning scale, as the incidence of fraudulent certification is, by far, the highest nature of complaint amongst the other problem reports in the Table 1. Last but not least, discuss the objective also encompasses the integration between the data analysis and literature review, then provide some tentative recommendations as to how one might reduce the fraudulent certification.

2. Literature Review

The problem currently faced by the aggrieved house buyers are varied and plentiful, but the most serious must be the one relating to the developer making use of the architect's professional integrity to cheat the house buyers. This is the fallout of the unbridled and frenzied speculative situation that the house buyers commonly experienced. It is difficult to imagine the sufferings experienced by the house buyers in their financial predicament, having to lose one's life saving is already bad enough but to be further lumbered with an enormous bank loan with ever increasing interests running is really adding salt to the wound (HBA, 2002c, 2003b). The question to be asked, whether such a situation can be avoided? The Malaysia National House Buyers Association (HBA) certainly thinks so. Buying a house should be no different from buying a car, but in actuality, the risk involved is much

greater (HBA, 2002c). When you buy a car, you are not exposed to the same risks as in buying a house. Have you heard of any person having paid for a car and not taking delivery because the manufacturer cannot supply? Have you heard of any car buyer having to fork out progressive payments while the car is in the manufacturing stage? Why then, is buying a house so different? First of all, the current Malaysia housing development system is sold to the house buyer a piece of drawing and build his home in future (HBA, 2003b, 2003c, 2003d; LRB, 2010b). This system has a so-called progressive billing stage payment it's mean the developer could claim the house buyer of any stage completion work base on the architect's stage certificate (Chan, 2010a; Chee, 1998, 2002; LRB, 2010a, 2010b). The architect is the developer's agent (HBA, 2003e, 2005b), and his consultancy fee is paid by the developer, in such a situation, he could likely fulfill the client's needs and this needs commonly conflict with his professionalism. Ultimately, this leads to the architect not performing his impartial certifier role and responsibility to compromise the house buyer interest (HBA, 2002b).

2.1 What is Fraud?

There are two principal method of getting something illegally. Either you physically force someone to give you what you want (using a gun, knife, other weapon, brute force), or you trick them out of their assets. The first type of theft we call robbery and the second type we call fraud (Albrecht, Albrecht, Albrecht, & Zimelman, 2009). Robbery is generally more violent and more traumatic than fraud as it attract much more media attention, but losses from fraud are bigger than the losses from robbery (Albrecht & Albrecht, 2004). The fraud can be defined as a deception made for personal gain. The word "deception" is a key. Fraud always involves deception, misrepresentation and trickery (Albrecht et al., 2009) Although there are many formal definitions of fraud, probably the most common definition of fraud is generic term, and embraces all the multifarious means which human ingenuity can devise are resorted to by one individual, to get an advantage over another by false representations. No advantage over another by false representations. No definite and invariable rule can be laid down as a general proposition in defining fraud, as it includes surprise, trickery, cunning and unfair ways by which another is cheated. The only boundaries defining it are those, which limit human knavery (Albrecht et al., 2009).

2.2 How Could Fraud Compromise the House Buyer Interest?

Even with the difficulties in measuring the fraud, most people believe that fraud is a growing problem and a lot of monies are lost due to incidents of the fraud increasing, so longitudinal studies of fraud are needed (Matulich & Currie, 2009). This is valuable because fraud affects

the public by having to pay extra for goods and services. It is almost impossible to read a newspaper or business magazine without coming across multiple incidents of fraud (Chang, 2001; Wells, 2004). E.g. many house buyers' pay the fraud billing to many developers base on the fraudulent stage completion certificate from the architects.

Even more alarming than the increased number of fraud cases is the size of discovered frauds. In earlier times, if criminal wanted to steal from his employer, he had to physically remove the assets from the business premise. Because of fear being caught with the goods, frauds tended to be small (Albrecht et al., 2009). The author perceives that, with the very competitive professional business in the construction industry now, many architects tend to hunt for as many projects as possible in order to sustain their architect business. He could try all possible ways to fulfill the client request, and this possibility could commit himself into fraud (HBA, 2002b, 2003e; Mohamed, 1987; Mohamed, 1999). E.g. a developer faces the pressure to meet the dateline to deliver the vacant possession (VP) otherwise, he could be liable for Liquidated Ascertain Damage (LAD) and as these pressure to meet the dateline have intensified, the developer would pressure the architect to prematurely issue the certificate for incomplete work, it consequently becomes an incidence of the fraudulent certification.

2.3 *What is a Fraudulent Certification?*

A certificate is the expression in a defined form of the exercise of judgment, opinion or skill of the certifier (architect) in relation to some matters provide for by the terms and conditions under the agreement, contract, regulation, act and law (Tan, 1998; Teh, 1998). Whereas, a fraudulent certificate can be defined as a document issued by a certifier (architect) certify the completion work without complying with the terms and conditions under the contract and statutory provisions such as SPA and BP, its includes providing undated signed certificates to developers and before proper application has been made for the Certificate of Completion and Compliance (CCC) together with all prior clearances from subsidiary approving authorities.

The fraudulent certification also can be defined as (1) If the architect signs a certificate, which is not prepared by him, but is prepared by his client or his nominees. (2) If the architects issue a certificate for a housing project which is not supervised by him, but the project is supervised by other parties such as, developer's representative, contractor or any other consultant. (3) If the architect over certifies for any housing project that leads the house buyer pay unwarranted extra upfront monies. (4) Certify the house is completed and complied, but the house has many serious and unacceptable defective works outstanding which could harm the public safety, health and pure economic loss. (5) Certify the house completed and issue CCC even though the house is not safe for occupation due to dangerous construction work still in progress. (6) Issue CCC without any supportive Form-G certificate. (7) prematurely Certified VP, without water and electricity supply, remaining lots of serious defective and incomplete work 1987 (Awalludin, 2010; LRB, 2010a, 2011; Mahamed, 1999; MDC, 2010; Mohamed, 1987; Shukor, 2002; Tan, Sum, & Chen, 2007).

2.4 *Architect's Role and Responsibility*

In United States, no duty of an architect is subject to more scrutiny than issuance of payment certificates. The owner, naturally, does not want to pay more money prematurely or needlessly. The contractor, on the other hand, wants, needs and is entitled to the money as soon as possible

(O'Leary & Arthur, 2001). Similarly in Malaysia, the house buyers naturally do not want to prematurely pay the incomplete work, whereas the developers wish to claim as much money as possible from the house buyers (HBA, 2003a, 2006). Both house buyers and developers are generally acutely aware of the interest value of money.

In the certifier role, all completed works must be properly inspected by him before he can certify the work to be in accordance with the UBBL, approved BP and the conditions of the SPA (Mohamed, 1987). Hence, the architect, not only as the developer's agent but in his capacity as the impartial and objective services and construction contracts supervisor, shall protect the public's interests such as health and safety as he has a duty of care within the code of professional conduct under the Architect Act 1967 (Chan, 2010b; Chee, 1998; LRB, 2010a). All certification becomes a precedent condition to the developer claims for payment from the house buyers along with the contractor's claims for payment from the employer.

2.5 *Unperformed Role and Responsibility of Certifier*

The certification system rests upon professional ethics and therefore is upheld by the courts to affirm the faith in the professional integrity of 'architects' under the statutory accreditation. In Australia jurisdiction, Mr. Justice Isaacs has considered that a contract requiring certificates contained a tacit condition providing for the certifier's independence, so to quote; "The certifier shall preserve his independence and impartially towards both parties, subject only to whatever might be the necessary effect of honest and faithful performance of his proper duty as owner agent and that when once a dispute arises, such independent and impartiality shall be preserved even though that involves depriving the owner of the architect in connection with the matters in dispute" (RAIA, 1979). In such instances the architect is ethically bound to act in equitable fairness as a public duty. It is of course also necessary to uphold his standing in keeping with the impartial certification role and responsibility (Kasi, 1998; Mahamed, 1999). Having to decide whether to issue a progress payment certificate to the developer to allow him to claim from the house buyer a progress payment sometimes places him in a quandary of self-interest vs. public duty. One of the case study can be referred is within the first month of the New Year 2002, LAM has received a complaint, which is of extremely serious concern to the profession. The allegation relates to the incorrect or apparently fraudulent certification by architects that will have far-reaching consequences on innocent house buyers (Shukor, 2002). This unacceptable practice is encountered as the architect: (1) provides the undated signed certificates to the developer, (2) issue certificate even the work is still remain incomplete, (3) delegating his duty to other parties in satisfying himself that the work is completed according to SPA (Shukor, 2002).

2.6 *Unclear Certification Guideline in Housing Laws*

The majority of complaints relating to the certification problems, many house buyers have bad experiences that the architect fails to provide meaningful reason underlying his decision in certification and failed to certify the works have been reasonably completed and complied in accordance with the terms of the agreement. It commonly happened when the house buyer take the VP from the developer they find their houses are actually not ready for VP but the architects still issued the Certificate of VP to the developers to effect VP without rectified all the serious defective works. Hence, house buyer argues that, the architect is responsible of the third party's interest such as, house buyer and public at-large (Ahmad, 2012; Chan, 2011a; HBA, 2002a; Keen & Peng, 2012;

Mahamed, 1999; Shukor, 2002). The architect should not issue a fraudulent certificate to help the developer effect the VP in order to escape the compensation of LAD or claim unwarranted upfront monies for incompleteness works. Whereas, the architect insists that, his responsibility has nothing to do with the defective work, as long as the house is completed, he is obligated to issue the Stage Completion Certificate to the developer (Chan, 2008, 2011b, 2012). This may be due to the SPA under the HDR, which do not have a clear and specific certification guidelines in the act and regulation to clearly emphasize the role and responsibility of a certifier, nor does it endeavor to encourage inexperienced architects to acquire sufficient knowledge and experience to deal with the procedural vagaries of a housing project (Ho, 2012). Subsequently, the architect is being routinely exploited by the developers' insistence to issue fraudulent certification.

2.7 Issuance of Fraudulent Certification under Pressure

In Australia, a more effective way of making the architect the sole judge of the sufficiency of work done is to say in the contract: "No Certificate, No Money" (RAIA, 1979). Whereas in Malaysia the practice could be defined as: "No Certificate, No Consultancy Fee". If the architect is prematurely requested, but do not issue a progress payment certificate to the developers, he would likely not be paid by his client. When the architect is a developer's agent, his architectural business is survival depends on the consultancy fees.

As a fully accredited professional, the scope of an architect's involvement in housing development disputes is inevitable given the additional responsibilities of an architect under the HDA and HDR (Chan, 2011b). Certain duties and responsibilities are entrusted to him, in particular the certification roles in SPA between the developer and the house buyers (Woo, 2001). Under the Code of Professional Conduct, Architect Rules, he is expected to be fair to both parties and carry out his duties competently (Mahamed, 1999). In contrast, the developer understands his project monetary limits as his financial backers expect the projected profit margins, so the developer tries to prevail upon the architect to issue fraudulent certificates in order to claim unwarranted monies (HBA, 2005a; PAM, 2005). E.g. if he wishes to get paid, he should fulfill the developer requirement, even it is an unethically fulfillment as he is a payroll of the developer.

2.8 Unsatisfactory Consultancy Fees

The Singapore Institute of Architects (SIA) has long held that professional services cannot be subject to free-market capitalist forces. Rather, they must be regulated guidelines to avoid unhealthy undercharging. All professionals swear an oath to uphold the integrity and ethics of their profession; they shoulder a host of statutory duties. In the case of architects, they are obligated to be "officer of the State" to ensure that buildings comply with the rules and regulations lay down by state agencies (Chan, 2014). This duty brings to bear a cost on architects that has to be specially and reasonably remunerated as a basic component of fees. There has to be a minimum fee to fulfill the statutory role. Fee guidelines will ensure that quality standards in all professions are maintained and that they can enjoy long-term sustainability (LAM, 2000; Mohamed, 1987; Mohamed, 1999).

In Malaysia, whereas several interesting reasons were discovered that most architects felt the Scale of Minimum Fees under the Architect Rules prescribed for housing projects, is far too low for the work and responsibility involved (Mohamed, 1987). Furthermore, the developer quite often pays lower than the prescribed minimum fee (PAM, 2011).

As for other endeavors, a professionally qualified person can reasonable expect a certain level of remuneration for services rendered. This postulate is based on the belief that every human work place activity should at least not incur a loss and preferably be profitable. In the course of investigating these complaints, LAM has come to the conclusion that one of the contributory causes is directly related to the level of fees charged for the expected professional consultancy service (Mahamed, 1999). The scale of fees was derived after taking into account the fact that it is a necessity for every human activity to be profitable, no matter how narrow the margin is, and after years of works provide the minimum level of remuneration for absolutely minimum level of professional services required in the public's interest, as well as to satisfy both the legal requirements of relevant building laws and legislations and the stage certifications under the SPA. Thus, the inescapable result of inadequate remuneration must either be inadequate service, or even worse, malpractice (Mohamed, 1987). Many architects dare not undertake the periodical site inspections before certifying the stage completion of work, in some cases they even delegate their duty to another party to certify the completion works on their behalf (Shukor, 2002). Subsequently it becomes a fraudulent certification which the public commonly complaint to LAM.

3 Methodology

Methodology is seen as the cornerstone in every research project and it is to determine the research project's credibility, verifiability or validity. Hence, it also straightens out the research design in an empirical way. It is a guideline for conduction research activities in order to achieve the objective at each activity needs a research method to fill the expectations of research findings. It also "guides the researcher in the process of collecting, analyzing and interpreting observations" (Nachmias & Nachmias, 2007). In this study, several activities are used to complete the research objectives and several research method is employed in each stage. E.g. inputting all the public complaint cases in the table format to identify the fraudulent certificates are the highest problem amongst the other complaints, which received by LAM. Firstly, data collection is selected 12 years period (2001-2012 years) archive public complaint files in LAM office as a sample and use the quantitative method to determine the numbers of fraudulent certification as shows in figure 2.

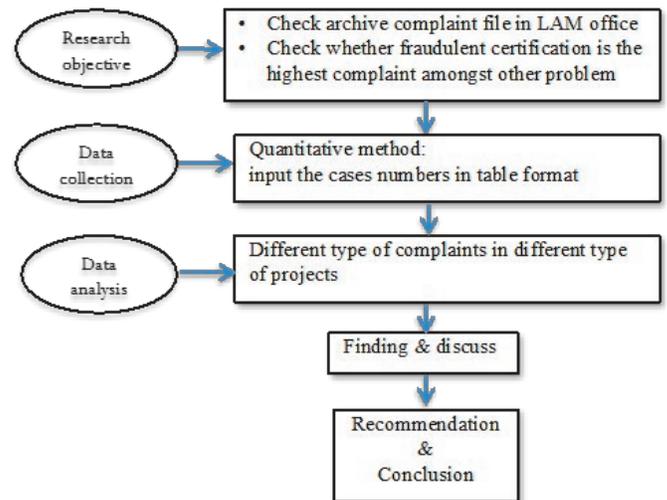


Figure 2: Flowchart for Research Method and framework

The data were collected from LAM archive complaint files such as, letter, emails, faxes, complaint forms and other evident documents which relate the wrong doing of the architects. Moreover, the author has advised by LAM to generally divide the types of public complaints against the architects such as, (1) certification problem, (2) defect, (3) supplanting, (4) collaboration with non-registered person or unlicensed developer, (5) Non-approval of practice, (6) unprofessional conduct, (7) contract matter, (8) architectural fee problem, (9) occupied building without BP, (10) delay of Certificate of Fitness and Occupation (CFO). In order to provide a deeper analysis whether or not the fraudulent certification problem is the highest amongst the other problems, we have depicted the fraudulent certification as shows in Figure 3.

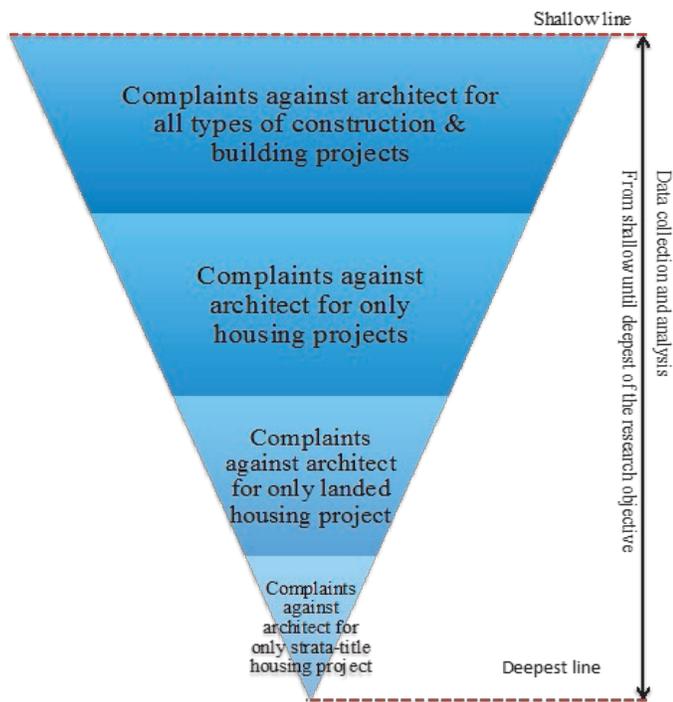


Figure 3: Diagram of Analysis Process

4. Results and Discussions

An absolute requirement of the professional is to exercise an acceptable level of maturity and competence in practice. Moreover, this practice is not a finite science save on certain aspects of design or technical in nature (Mahamed, 1999). Other than these, he is required to exercise impartially judgments, which require analysis of the situations and eventually anticipated outcomes of certain decision. Therefore, his integrity must be unquestioned and his honesty must be impeccable. In his professional dealings he may be entrusted with commercial and strategic confidences and transactions possibly worth millions of Ringgits. So the clients, governments, public and financial institute honor his certifications (Mahamed, 1999). The society expects him to conduct himself beyond reproach, so he should perform his role and responsibility. However, base on all the data analysis and perceive that, many architects have acted oppositely of what is required in the Code of Professional Conduct because the fraudulent certification is the highest allegation from the house buyers amongst the other problems. It appears in the Table 1, the public complaint against the architects in all types of construction projects, e.g. Housing, Non-housing Government, Commercial, Institution project have consisted of 159 cases (46.7%) out

of 341 total complaint cases.

The certifying architect has both a commercial as well as a professional, and in time, evens a special personal sense of loyalty to his developer client. Accordingly he may face ethical conflicts in the course of his certifying activity (RAIA, 1979). That is, he may form an objective opinion, which may perhaps be contrary to his client's immediate interests. E.g. a request for an inaccurate progress payment certificate to facilitate the client's financial transaction. A case could be referred to is certifying involving deviation from the approved BP, when the house buyer complains to the certifying architect and the architect's reply is that: "it does not matter the wall is crooked, so long as it has been built" (HBA, 2005a). Most of the house buyers have bad experience that the architects have failed to act a completely free agent to utmost of his ability, act independently, fairly and impartially in the certifying process; therefore, the fraudulent certification is the highest complaint amongst the problem as shows in the Table 1, the public complaint against the architects in All types of Housing Projects has consisted of 128 cases (65.6%) out of 195 total complaint cases.

It is noted that, the certification may involve risk aspects that many architects have not traditionally been exposed to. If an architect decides to become a certifier, he will need to ensure that his professional indemnity insurance is adequate to cover the full scope of risk associated with the work (RAIA, 2000; Thuraisingham, 2013). This responsibility can neither be delegated nor abrogated. Moreover, certificates often mark financial consequences resulting in the flow of money from one party to another. In doing so, the architect is placed in a position of required impartiality to act fairly between the parties in a professional manner while exercising his own independent judgment (Tan, 1998; Teh, 1998). If this requirement is not met, any related determination by the architect can be challenged. It appears in the Table 1 that, the public complaint against the architect due to the fraudulent certification in Landed Properties Housing Project is the highest amongst the other problems and this consist of 87 cases (63.5%) out of 137 total complaint cases.

In many house buyers' opinions that, the developer commonly pressure the architect to issues fraudulent certification to cheat their interests (HBA, 2005a; PAM, 2005). Distortions such as, understated or inflated progress claims to be paid by the house buyer are often procured by offering an inducements to the architect. E.g. offering the next phase of new housing project to exchange the stage payment certificate to claim unwarranted monies from the house buyers. It appears that, the public allegation regarding the fraudulent certification is the highest complaints amongst the other problems in the Strata-Title Properties Housing Project, this consist of 41 cases (70.7%) out of 58 total complaint cases. Give this statistic, a question of why the architect can be pressured by the developer to issue such fraudulent certification to compromise the house buyers' interests? Hence why the architect would rather damage the Professional Code of Conduct to assist the developer but lost the public trust? It is simply because he/she is the developer's agent (HBA, 2005b).

Moreover, the minimum of consultation fees for the absolutely minimum level service is expected to be in the public's best interest (Mohamed, 1987). Therefore, the architectural fees have a direct integration with the fraudulent certification. A question of 'why the architects still accept a much lower fee for housing projects'? This is simply because, given the need to secure their own architectural business survival, newly qualified architects have no alternative, but to

Table 1 Public Complaints Against Architects in Malaysia during 2001-2012

Complaint	Public complaints against architects for:	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	Total
Fraudulent Certification	All types of Construction Works. E.g. Housing, Non-housing Government, Commercial, Institution project	1	2	1	9	11	29	27	23	11	30	10	5	159
	All types of Housing Project	1	2	0	8	9	24	24	16	7	23	9	5	128
	Only Landed Properties (Schedule G) Housing Project	0	0	0	8	2	18	14	9	3	22	6	5	87
	Only Strata Title Properties (Schedule H) Housing Project	1	2	0	0	7	6	10	7	4	1	3	0	41
Defect	All types of Construction Works. E.g. Housing, Non-housing Government, Commercial, Institution project	0	0	0	0	0	3	3	4	2	2	0	1	15
	All types of Housing Project	0	0	0	0	0	3	3	2	2	0	0	1	11
	Only Landed Properties (Schedule G) Housing Project	0	0	0	0	0	3	3	0	2	0	0	1	9
	Only Strata Title Properties (Schedule H) Housing Project	0	0	0	0	0	0	0	2	0	0	0	0	2
Supplanting	All types of Construction Works. E.g. Housing, Non-housing Government, Commercial, Institution project	0	0	0	1	0	5	2	4	4	3	2	0	21
	All types of Housing Project	0	0	0	0	0	2	1	0	4	0	1	0	8
	Only Landed Properties (Schedule G) Housing Project	0	0	0	0	0	1	1	0	0	0	0	0	2
	Only Strata Title Properties (Schedule H) Housing Project	0	0	0	0	0	1	0	0	4	0	1	0	6
Collaboration with non-register person or unlicensed developer	All types of Construction Works. E.g. Housing, Non-housing Government, Commercial, Institution project	0	0	0	0	0	0	0	0	0	26	0	0	26
	All types of Housing Project	0	0	0	0	0	0	0	0	0	25	0	0	25
	Only Landed Properties (Schedule G) Housing Project	0	0	0	0	0	0	0	0	0	24	0	0	24
	Only Strata Title Properties (Schedule H) Housing Project	0	0	0	0	0	0	0	0	0	1	0	0	1
Non-approved of practice	All types of Construction Works. E.g. Housing, Non-housing Government, Commercial, Institution project	0	0	0	0	0	0	2	0	0	1	1	0	4
	All types of Housing Project	0	0	0	0	0	0	0	0	0	0	0	0	0
	Only Landed Properties (Schedule G) Housing Project	0	0	0	0	0	0	0	0	0	0	0	0	0
	Only Strata Title Properties (Schedule H) Housing Project	0	0	0	0	0	0	0	0	0	0	0	0	0
Unprofessional conduct	All types of Construction Works. E.g. Housing, Non-housing Government, Commercial, Institution project	0	0	0	1	1	9	7	15	7	19	10	0	69
	All types of Housing Project	0	0	0	0	0	1	1	3	2	3	1	0	11
	Only Landed Properties (Schedule G) Housing Project	0	0	0	0	0	0	1	2	2	3	1	0	9
	Only Strata Title Properties (Schedule H) Housing Project	0	0	0	0	0	1	0	1	0	0	0	0	2
Contract matters	All types of Construction Works. E.g. Housing, Non-housing Government, Commercial, Institution project	0	0	0	0	1	3	5	3	6	4	3	1	26
	All types of Housing Project	0	0	0	0	0	1	1	1	2	0	1	0	6
	Only Landed Properties (Schedule G) Housing Project	0	0	0	0	0	0	0	0	1	0	0	0	1
	Only Strata Title Properties (Schedule H) Housing Project	0	0	0	0	0	1	1	1	1	0	1	0	5
Architectural fee dispute	All types of Construction Works. E.g. Housing, Non-housing Government, Commercial, Institution project	0	0	0	0	0	0	1	0	0	1	3	0	5
	All types of Housing Project	0	0	0	0	0	0	1	0	0	1	0	0	2
	Only Landed Properties (Schedule G) Housing Project	0	0	0	0	0	0	1	0	0	0	0	0	1
	Only Strata Title Properties (Schedule H) Housing Project	0	0	0	0	0	0	0	0	0	1	0	0	1
Occupied building without BP, CFO & CCC	All types of Construction Works. E.g. Housing, Non-housing Government, Commercial, Institution project	0	0	0	0	0	0	0	0	0	0	3	0	3
	All types of Housing Project	0	0	0	0	0	0	0	0	0	0	1	0	1
	Only Landed Properties (Schedule G) Housing Project	0	0	0	0	0	0	0	0	0	0	1	0	1
	Only Strata Title Properties (Schedule H) Housing Project	0	0	0	0	0	0	0	0	0	0	0	0	0
Delay of CFO	All types of Construction Works. E.g. Housing, Non-housing Government, Commercial, Institution project	0	0	0	1	1	1	6	2	1	0	1	0	13
	All types of Housing Project	0	0	0	0	0	1	1	0	0	0	1	0	3
	Only Landed Properties (Schedule G) Housing Project	0	0	0	0	0	1	1	0	0	0	1	0	3
	Only Strata Title Properties (Schedule H) Housing Project	0	0	0	0	0	0	0	0	0	0	0	0	0

accept the inequitable consultation fee from their developer clients. According to the PAM Procurement Survey in March – April 2011, most of the architects do not satisfy with the consultancy fee in housing projects (PAM, 2011; Teh, 2012). As a professionally qualified person, it is reasonable to expect a certain level of remuneration for services rendered based on the belief that every human work place activity should be profitable (Mohamed, 1987).

In the average architectural firm, housing projects, in one form another; constitute at least half of the office workload. For those architects with sufficient experience, it is a known fact that the exposure to liabilities as a result of handling housing projects is especially high relative to the value of the undertaken work when compared to projects not related to housing (Chee, 2002). Because in no small part to the fact that in

addition with having to deal with the developers, the architect may also have to answer to the house buyers should things go wrong whether with the works or with certification for stage progress claims under the SPA (Chee, 1998). It can also be inferred from the complaints against architects received by LAM and since 2001 until 2012 (see Table 1) that many architects involved in housing developments appear inexperienced with their duties and obligations to issue certificates under the main laws governing the housing development such as, HDA and HDR as well as other relevant act such as, (1) Uniform Building By-Law (UBBL), (2) Street Drainage and Building Act (SDBA). Many remain blissfully unaware of the consequences of not carrying out with their duties with due care, especially issuing the fraudulent certifications, either the stage payment certificates or work completion certificates have become a major problem and threatened the house buyers' interests.

5. Conclusions and Recommendations

Many architects do not perform the certifier's responsibility and commit themselves into the professional negligence. It perceive that, the elements of (1) Unperformed Certifier Role and Responsibility, (2) Unclear certification guideline in housing laws, (3) Pressure by Developers to Issue Fraudulent Certificate, (4) unsatisfactory Consultation Fees, which could contribute to the fraudulent certification in housing project as show in figure 3.

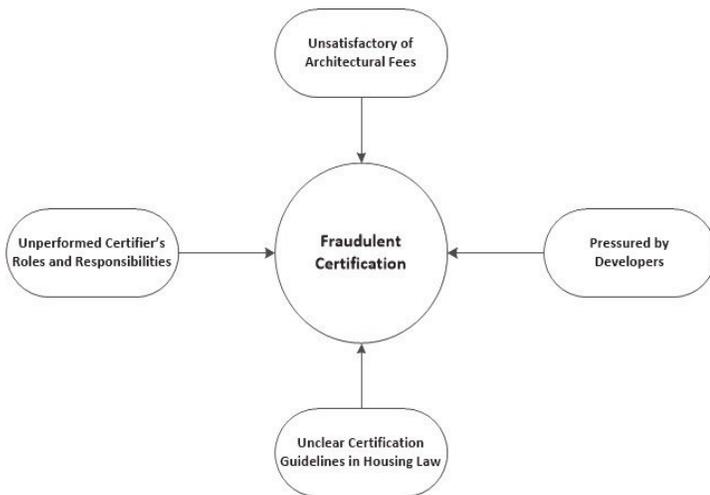


Figure 3: Five Elements Integrated with Fraudulent Certification

One rule for the guidance in performing architect duty as a certifier is that, he should act honestly, strictly, impartially and without any perverse conduct to deal with the matter at all time. LAM should recognize this problem and propose to the federal government to amend the relevant building laws to restrict the developer to interfere (pressure) the architect on the certification role. A question: how to overcome these problems to protect the architect and public's best interests? LAM could refer to the land surveyor procurement and fee payment procedure. An employer shall pay the land survey service fee to the Board of Land Surveyor Malaysia as a stakeholder in accordance to Vide Federal Government Gazette PU (A) 169 dated 1 May 1997 Thirteenth Schedule (Regulation 99) Scale of Fees for Title Surveys. Under this procedure, if the developer fails to pay such fee or pay lower than the Architect (Scale of Minimum Fee) Rule, LAM shall immediately instruct the architect to suspend the work. This could cut down the chance of employer demands for discounted fee rate or refuse to pay with any reason. E.g. no payment due to sale not good, or no payment due to economy down turn, or no payment due to the cheque has not been signed by the developer, or no payment due to not fulfill the developer's instruction.

The United State government has realized that, when a house owner request changing the certification procedure in the contract, but the architect does not have the power to do so (O'Leary & Arthur, 2001). In Malaysia, when a house buyer wishes to stop paying the developer in accordance with the architect fraudulent certification, he has no power to do so. Because there is no provision under the SPA allows the bank to stop paying the developer due to architect fraudulent certification; therefore, the architect shall carefully to certify the stage completion work in order to protect the public's interest and architect reputation in the professional industry. LAM should recognize the complicated

problem in the Schedule of Stage Payment Certificates under the SPA and other legal loopholes to compromise the house buyer interest by the fraudulent certification, if nothing is done to mitigate the problem. Should LAM and PAM direct some effort to formulate a comprehensive certification system and regulate this system in the HDA, HDR and SPA to mandate the developer and architect strictly comply in order to secure the house buyers' interests and reduce the omnipresent dilemma to the government. Hence, this comprehensive guideline system shall regularly update in according to the current construction trend and design. LAM an PAM shall also instruct all architects to highlight the certification role and procedure in certification system in the stage of signing the Memorandum of Agreement for architectural service and insist the client to comply the comprehensive certification guideline under the relevant housing laws.

The finding result shows that most of the architect do not perform the roles and responsibility of undertaking certification, what an architect needs to know and the areas which he needs to be alerted when undertaking progress certification for housing projects. They are by no means exhaustive as new issue and problems keep appearing. A housing development is not just a matter of drawing a typical unit, the architect is expected to diligently and carefully to certify all stages of completion of the works, since the works (houses) belong to the third party (house buyer) instead of the developer. Moreover, in response to the currently evolving litigious trends the House Buyer Associate of Malaysia has been formed to take up collective action against the developers, often citing the architect as a party to be suit. The unwelcome litigation could be enough to tarnish the architect's reputation and may be costly to resolving the matter. During that time, the architect will stand alone to defend himself in the court and there is no laws could protect the architect's interest, but there are many laws could put a full stop to dismiss his architectural practice.

The fraudulent certification could create a strong impact to compromise the house buyer's interest and this compromising could damage the professional reputation. Once the reputation is damaged, the public has no longer trust of Malaysia architect. Ultimately they would rather pay higher fee to appoint foreign talented architect to design and construct their home. In this situation, the Malaysia architect could only become a sub-actor (as a submitting architect only, as it is protected by the Architect Act, SDBA and UBBL), but the foreign architect will slowly occupy the Malaysia architectural industry and become a star architect (main actor) whose is fully supported by the public at-large to act the whole architectural show in Malaysia architectural industry.

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