

IN THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL

No. 10 of 1977

O N A P P E A L  
FROM THE FEDERAL COURT OF MALAYSIA  
(APPELLATE JURISDICTION)

B E T W E E N :

MALAYSIAN ARMED FORCES CO-OPERATIVE  
HOUSING SOCIETY LIMITED

Appellants  
(Plaintiffs)

- and -

NANYANG DEVELOPMENT (1966) SDN. BHD.

Respondents  
(Defendants)

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RECORD OF PROCEEDINGS

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Solicitors for the  
Respondents

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INDEX OF REFERENCE

No.	Description of Document	Date	Page
	<u>IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR</u>		
1.	Statement of Defence and Counterclaim	23rd November 1971	1
2.	Reply and Defence to Counterclaim	15th December 1971	7
3.	Particulars of amounts counterclaimed:		
	(a) Gombak Park		9
	(b) Ampang Park		11
4.	Notes of Proceedings	31st July 1975	12
	<u>Plaintiffs' Evidence</u>		
5.	<u>P.W.l Yeap Yooi Eng</u>		
	Examination		16
	Cross-examination		18
	Re-examination		18
6.	Judgment of Abdul Hamid T.	2nd October 1975	20
7.	Order	2nd October 1975	28

No.	Description of Document	Date	Page
	<u>IN THE FEDERAL COURT OF MALAYSIA</u> <u>(Appellate Jurisdiction)</u>		
8.	Notice of Appeal	30th October 1975	29
9.	Memorandum of Appeal	December 1975	30
10.	Notes of argument recorded by Suffian L.P.	14th January 1976	33
11.	Judgment	21st February 1976	37
12.	Order	21st February 1976	44
13.	Order granting final leave to appeal to His Majesty the Yang di-Pertuan Agong	10th January 1977	45

EXHIBITS

Exhibit No.	Description of Document	Date	Page
	<u>Plaintiffs' Exhibits</u>		
P1.	Layout plan of Gombak Housing Scheme		47
P2.	Layout plan of Ampang Housing Scheme		48
P3.	Agreement between Plaintiffs and Gombak Gardens Limited	15th March 1966	49
P4.	Agreement between Plaintiffs and Defendants	23rd August 1966	61

DOCUMENTS TRANSMITTED BUT NOT REPRODUCED

Description of Document	Date
<u>In the Federal Court</u>	
Notes of argument recorded by Lee Hun Hoe, C.J., Borneo	14th January 1976
Notes of argument recorded by Wan Suleiman, F.J.	14th January 1976
Notice of Motion for conditional leave to Appeal to His Majesty the Yang di-Pertuan Agong	2nd April 1976
Affidavit of Major Haji Abdullah Munir in support of Motion	1st April 1976
Order granting conditional leave	7th June 1976

1.

IN THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL

No.10 of 1977

O N A P P E A L  
FROM THE FEDERAL COURT OF MALAYSIA  
(Appellate Jurisdiction)

B E T W E E N :

MALAYSIAN ARMED FORCES CO-OPERATIVE  
HOUSING SOCIETY LIMITED

Appellants  
(Plaintiffs)

- and -

NANYANG DEVELOPMENT (1966) SDN. BHD.

Respondents  
(Defendants)

RECORD OF PROCEEDINGS

No. 1

In the High  
Court

Statement of Defence and Counterclaim

          
No. 1

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

CIVIL SUIT NO.807 OF 1971

Statement of  
Defence and  
Counterclaim

Between

23rd November  
1971

Malaysian Armed Forces Co-operative  
Housing Society Limited,  
c/o Ministry of Defence,  
Jalan Padang Tembak,  
Kuala Lumpur

Plaintiff

10

And

Nanyang Development (1966) Sdn. Bhd.,  
Room 405, 4th Floor,  
Kwong Yik Bank Building,  
Jalan Bandar,  
Kuala Lumpur.

Defendant

STATEMENT OF DEFENCE

1. Paragraphs 1 and 2 of the Statement of Claim  
are admitted.

20

2. Paragraphs 3 and 4 of the Statement of Claim  
are admitted but the Defendant avers that all the

In the High  
Court

—  
No. 1

Statement of  
Defence and  
Counterclaim  
23rd November  
1971  
(continued)

aforsaid agreements were subsequently varied by the parties at two meetings held on or about the 17.3.1970 and 20.5.1970 to settle the disputes then existing between the parties.

3. Under the terms of the said agreements as contained in the minutes of the meetings dated the 17.3.1970 and 25.5.1971 it was agreed inter-alia as follows:-

- (i) That the Plaintiff will purchase from the Defendant the remaining balance of 39 vacant lots at Gombak at \$1.80 per sq. foot; 10
- (ii) That the Plaintiff will enter into an agreement with the Defendant for the construction of 33 detached and 6 semi-detached houses on the 39 lots;
- (iii) (a) That the Defendant will pay interest to the Plaintiff at 6½% on the sum of \$2,915,200.00 paid to the Defendant (hereinafter called "the Principal Sum") less the costs of land and construction of 117 terrace houses and 6 detached houses; cost of 59 lots of land for 45 detached houses, 6 semi-detached houses and 14 shop houses as from 1.1.1968. 20
- (b) That the Principal Sum shall be reduced further as from 1.7.1968 being the date of completion of the 14 shop-houses by deducting the cost of construction of the 14 shop-houses;
- (c) That the Principal Sum shall be further reduced as from 1.4.1969 being the date of completion of the 6 detached houses by deducting the cost of construction of the 6 detached-houses. 30

4. According to the account of the Defendant calculated in accordance with the terms of the aforesaid agreements and in accordance with the terms of the agreement of the 10.3.1966 the Plaintiff is in fact still indebted to the Defendant in the sum of \$11,068.16 full particulars are as follows:- 40

Payments received by the Defendant:- \$2,915,700.00

In the High  
Court

LESS: contract price \$1,564,550.00  
for 117 terrace  
houses

\_\_\_\_\_  
No. 1

Statement of  
Defence and  
Counter claim

23rd November  
1971  
(continued)

10	contract price for 6 detached houses	302,781.00	
	contract price for 14 shop-houses	271,000.00	
	cost of land for 33 detached lots	396,000.00	
	cost of land for 6 semi-detached lots	48,000.00	
	Interest on late payment on 117 terrace houses	40,442.19	
	on 6 detached houses	2,556.24	
20	Legal fee paid on Malaysian Armed Forces Co-operative Housing Society's behalf to M/s.Allen & Gledhill in respect of agreement dated 15th March 1966	705.50	
30	Water supply e.g. reticulation, elevated tank, pump-house, suction tank etc.	160,435.36	
	Electricity supply e.g.substation etc.	9,408.87	
	Maintenance of roads and drains	36,270.00	
	Cost of alterations and additions to houses	94,619.00	2,926,768.16
		<hr/>	<hr/>
	Amount due to the Defendant at 30.9.1971		\$ 11,068.16
			<hr/>

40 5. Paragraph 7 is admitted in so far that there was an agreement to pay interest at  $6\frac{1}{2}\%$  per annum.

In the High  
Court

Statement of  
Defence and  
Counter claim  
23rd November  
1971  
(continued)

The rest of the allegations are denied and the Plaintiff is put to strict proof thereof.

6. By reason of the agreements aforesaid contained under clause 4 of the defence and the account of the Defendant, paragraph 8 is denied and the Plaintiff is put to strict proof thereof.

C O U N T E R C L A I M

7. By way of a counterclaim the Defendant repeats paragraphs 2, 3 and 4 of the Statement of Defence.

8. It was agreed mutually between the parties at the meeting of the 17.3.1970 that the Plaintiff would enter into an agreement with the Defendant to build on behalf of the Plaintiff 33 bungalows and 6 semi-detached houses on the 39 lots at the cost of \$25,000.00 per bungalow and \$19,900.00 per semi-detached house inclusive of the cost of land based on the standard area of 6,000 sq. feet for bungalows and 3,200 sq. feet for semi-detached lots the differences to be adjusted at \$1.80 per sq. foot. 10

9. The Defendant did on or about the 11th November 1970 send a draft agreement to the Plaintiff for its approval but till date the Plaintiff has not acted on the draft agreement. 20

10. The Defendant has been ready, willing and able to enter into an agreement for the construction of the 39 houses but the Plaintiff has failed and/or neglected to enter into an agreement with the Defendant despite demands made.

11. By reasons of the Plaintiff's failure to enter into an agreement with the Defendant for the construction of the 39 houses, the Defendant has suffered loss and damage. 30

12. By a written agreement of the 23rd August 1966 the Plaintiff agreed with the Defendant inter-alia as follows:-

(a) By clause 1 of the said agreement the Plaintiff agreed to purchase initially 65 lots of land measuring in total area 444,989 sq. feet together with specified types of houses to be built thereon at the total cost of \$2,783,210.00; 40

(b) By clause 12 of the said agreement the Plaintiff agreed to purchase the remaining 43 lots measuring in total area 250,154 sq. feet together with the specified types of houses to be built thereon at the total cost of \$1,759,925.00;

In the High Court

-----  
No. 1

Statement of Defence and Counterclaim

23rd November 1971

(continued)

(c) For purposes of calculation of the purchase price of the said land and houses it was agreed that the price of land shall be calculated at \$2.50 per sq. foot and the cost of building shall be \$38,000.00 and \$26,600.00 respectively. The Defendant will refer to the agreement at the trial for its full force and effect.

10

13. The Plaintiff till date has only completed purchase of the 65 lots of land with houses built thereon but has refused and/or neglected to complete purchase of the remaining 43 lots of land and has also failed and/or neglected to give instructions to the Defendant to commence construction of buildings on the said 43 lots of land.

20

14. The Defendant on the 7th November, 1971 gave notice to the Plaintiff to complete purchase of the remaining 43 lots as agreed but the Plaintiff has replied saying that it is not obliged to comply with the terms of the said agreement.

15. By reason of the Plaintiff's breach of the agreement the Defendant was forced to resell the said 43 lots of land to the Sharikat Kemajuan Pegawai2 Kerajaan Sdn. Bhd. at the price of \$1.30 per sq. foot thereby suffering a loss of \$300,184.80.

30

P A R T I C U L A R S

Cost of the 43 lots measuring  
in total area 250,154 sq.feet  
at \$2.50 per sq. foot = \$625,385.00

Cost of 250,154 sq. feet at  
\$1.30 per sq. foot = 325,200.20

Difference \$300,184.20



In the High Court

No. 1

Statement of Defence and Counterclaim

23rd November 1971 (continued)

16. The Defendant has also suffered further loss and damage by reason of the Plaintiff's breach of contract as the Defendant has lost the profit that it would have made on the construction of the 43 houses on the said land.

Wherefore the Defendant claims the following:-

- (a) the sum of \$11,068.16 under paragraph 4 of the Statement of Defence;
- (b) general damages suffered by the Defendant under paragraph 11 of the Statement of Defence; 10
- (c) the sum of \$300,185.20 being the loss suffered by the Defendant under paragraph 15 of the Statement of Defence;
- (d) general damages under paragraph 16 of the Statement of Defence;
- (e) interest at the rate of 8.4 per cent per annum on the sum of \$11,068.16 from 1.7.70 till date of judgment and thereafter at 6% per annum till payment;
- (f) interest at 6% per annum on the sums found due under paragraphs (b), (c) and (d) from date of judgment till payment; 20
- (g) costs; and
- (h) any other relief the Court may deem fit.

Dated this 23rd day of November, 1971.

Sgd.

.....  
Solicitors for the Defendant  
above-named

This Defence and Counterclaim was filed on behalf of the Defendant by Messrs. Chooi & Company, Advocates and Solicitors, whose address for service is at Kwong Yim Bank Building, 10th Floor, Jalan Bandar, Kuala Lumpur. 30

No. 2

In the High  
Court

Reply and Defence to Counterclaim

No. 2

Reply and  
Defence to  
Counterclaim15th December  
1971Reply

1. Save and in so far as the same consists of admissions, the Plaintiff joins issue with the Defendant upon its Defence and, in particular, denies that the agreements as reached at the meetings of the 17th of March 1970 and the 25th of May 1971 are as alleged by the Defendant in paragraph 3 of the Statement of Defence. The Plaintiff avers that the 39 vacant lots at Gombak referred to in paragraph 3(1) of the Statement of Defence were transferred by the Defendant to the Plaintiff for the purpose only of enabling the Plaintiff to furnish sufficient security for raising a loan from the Federal Government and it was expressly agreed by the Defendant that the Defendant was to accept a re-transfer thereof upon settlement of accounts between the Plaintiff and the Defendant in respect of their obligations under the agreements mentioned in paragraph 3 of the Statement of Claim.

2. The Plaintiff further expressly denies that the agreement reached at the meetings of the 17th day of March 1970 and the 25th day of May 1970 had the effect alleged by the Defendant in paragraphs 3(ii) and 3(iii) of the Statement of Defence and avers that on a calculation based on such agreement (if properly construed so as to give effect to the intent of the parties hereto) there is due and payable by the Defendant to the Plaintiff the amount specified in paragraph 8 of the Statement of Claim; and accordingly, paragraph 4 of the Statement of Defence is denied.

DEFENCE TO COUNTERCLAIM

3. With regard to paragraph 7 of the Counterclaim, the Plaintiff repeats paragraphs 1 and 2 of its Reply.

4. Save that it was agreed by certain persons representing the Plaintiff at a meeting with the Defendant held on the 17th day of March 1970 that a draft agreement for the construction of houses on the 39 lots in question should be submitted to the Plaintiff by the Defendant for the Plaintiff's consideration and approval, the Plaintiff denies paragraph 8 of the Counterclaim.

In the High  
Court

—  
No. 2

Reply and  
Defence to  
Counterclaim

15th December  
1971  
(continued)

5. The Plaintiff denies paragraph 11 of the Counterclaim and avers that the Defendant is not in law entitled to claim against the Plaintiff for the loss or damage, if any, alleged in the said paragraph 11, by reason only that the same arose out of the circumstances mentioned in paragraphs 8 to 10 of the Counterclaim.

6. The Plaintiff admits paragraph 12(a) and (b) of the Counterclaim but avers that by a note of understanding executed by the Plaintiff and the Defendant or on their behalf at or about the time of the execution of the Agreement of the 23rd day of August, 1966 and subject to which note the said Agreement was executed, the Defendant agreed that the liability of the Plaintiff to purchase the 65 lots and the 43 lots mentioned in the said paragraph 12(a) and 12(b) of the Counterclaim was to extend only to houses actually booked by the members of the Plaintiff and the Defendant further agreed that it would dispose of the 43 lots mentioned in paragraph 12(b) of the Counterclaim in the event that the said lots were not booked by the Plaintiff's members. By reason of the understanding aforesaid, the Defendant is now estopped from insisting on its rights under Clause 12 of the said Agreement. Alternatively, the Plaintiff avers that final accounts have been rendered by the Defendant to the Plaintiff with respect to their rights and obligations under the Agreement of the 23rd day of August 1966 aforesaid and all amounts due and payable by the Plaintiff to the Defendant under the said Agreement and pursuant to the final accounts so rendered have been paid by the Plaintiff to the Defendant who has received and accepted such amounts in satisfaction and discharge of all its rights and claims against the Plaintiff under the said Agreement. The Plaintiff further contends that at no time prior to the date of the Plaintiff's claim herein had the Defendant required the Plaintiff to purchase the said 43 lots. 10  
20  
30  
40

7. The Plaintiff has no knowledge of the allegations contained in paragraph 12(c) of the Counterclaim and puts the Defendant to strict proof thereof.

8. Save that the Plaintiff has completed the purchase of the 65 lots of land with houses built thereon, the Plaintiff denies paragraph 13 of the Counterclaim.

10 9. The Plaintiff denies paragraphs 15 and 16 of the Counterclaim and avers that the Defendant's offer to sell the said 43 lots to the said Sharikat Kemajuan Perumahan Pegawai2 Kerajaan Sdn. Bhd. was made well before the 7th day of November, 1971 when the purported notice mentioned in paragraph 14 of the Counterclaim was given to the Plaintiff for the first time. The Plaintiff further contends that at the date of filing of the Counterclaim by the Defendant the said 43 lots had not been sold by the Defendant to the said Sharikat.

In the High Court  
—  
No. 2  
Reply and Defence to Counterclaim  
15th December 1971  
(continued)

10. Save as hereinbefore specifically admitted, the Plaintiff denies each and every allegation contained in the Counterclaim as though the same were herein set out and traversed seriatim.

Dated the 15th day of December, 1971.

Sgd.  
.....  
Plaintiff's Solicitors

20 This Reply and Defence to Counterclaim is filed by Messrs. Rithauddeen & Aziz, Solicitors for the Plaintiff, whose address for service is 1st Floor, Bank of Canton Building, Leboh Pudu, Kuala Lumpur.

No. 3(a)

Particulars of amounts counterclaimed -  
Gombak Park

NANYANG DEVELOPMENT (1966) SDN. BHD.

Amount due from Malaysian Armed Forces Co-operative Housing Society Ltd.

Gombak Park

30	1. Cost of construction of N.E.B. sub-station - Appendix B	5,083.38
	2. Land cost (substation) - 991 sq.ft. @ \$1.80 p.s.ft.	<u>1,783.80</u>
		\$6,867.18
	<u>Less:</u> Amount received from N.E.B.	<u>4,000.00</u>
	Carried forward	\$2,867.18

No. 3

Particulars of amounts counterclaimed - Gombak Park

In the High Court	Brought forward	₱ 2,867.18	
No. 3	3. Cost of construction of suction tank and pumphouse - Appendix C	11,011.52	
Particulars of amounts counterclaimed - Gombak Park (continued)	4. Land cost (suction tank and pumphouse) - 7,336 sq.ft. @ ₱1.80 p.s.ft.	13,204.80	
	5. Pumping equipment - Appendix H	<u>13,460.00</u>	
		<u>₱40,543.50</u>	
	₱40,543.50 x total No. of houses 385 =	₱105.31	10
	p.house		
	∴ 143 houses belongs to M.A.F. =	₱105.31	
	p.house x 143 houses	<u>₱15,059.33</u>	
	6. Maintenance of suction tank - Appendix F	1,070.00	
	7. Electrical maintenance to pumphouse - Appendix I	1,855.00	
	8. Maintenance to pumphouse - Appendix J	2,278.00	
	9. Electricity charges for pumphouse - Appendix K	947.68	20
	10. Elevated 50,000 gallon water storage tank - Appendix G	₱18,000.00	
	11. Installation of lightning conductor to water storage tank - Appendix D	1,250.00	
	12. Floor slab, fencing, gate & drains for above - Appendix E	<u>1,100.00</u>	
		<u>₱20,350.00</u>	
	₱20,350.00 x total no. of houses 385 =	₱52.86	
	p.house		
	∴ 143 houses belongs to M.A.F. =	₱52.86	
	p.house x 143 houses	7,558.98	
	13. Reticulation - water mains to 143 M.A.F. houses (Agreement Clause 8) - Appendix M	50,320.90	

No. 3(b)

In the High  
CourtParticulars of amount counterclaimed -  
Ampang Park          
No.3(b)NANYANG DEVELOPMENT (1966) SDN. BHD.Particulars  
of amount  
counterclaimed  
- Ampang ParkAmount due from Malaysian Armed Forces Co-  
operative Housing Society Ltd.AMPANG PARK

10	1. Capital contribution (connect service mains to M.A.F. houses) - Appendix A	\$ 5,500.00
	2. Cost of construction of N.E.B. sub-station - Appendix B	\$ 4,309.00
	3. Land cost (substation - 3,477 sq.ft. @ \$2.50 p.s.ft.)	<u>\$ 3,692.50</u>
		\$13,001.50
	<u>Less:</u> Amount received from N.E.B.	<u>\$ 4,500.00</u>
		<u>\$ 8,501.50</u>
20	<u>\$8,501.50 x total No. of houses = \$77.29 p.house</u> ∴ 65 houses belongs to M.A.F. = \$77.29 p.house x 65 house	5,023.85
	4. Retaining wall to drains to M.A.F. houses - Appendix C	13,006.50
	5. Deep footings (foundation) as directed by M.A.F. - Appendix D	22,178.73
	6. Reticulation - water mains to 65 M.A.F. houses - Appendix E	<u>24,046.80</u>
		<u>\$</u>

In the High Court

No. 4

Notes of Proceedings

No. 4

Notes of proceedings

Notes of Proceedings

31st July 1975

In the High Court in Malaya at Kuala Lumpur

In Open Court

Before Abdul Hamid, J.,

This 31st day of July, 1975.

Civil Suit No. 807/71:

Raja Abdul Aziz bin Raja Addruse for plaintiffs.

En. Ronald T.S. Khoo for defendants.

10

Mr. Ronald Khoo informs Court that the main claim has been settled. The Court is only concerned with the counter-claim of the defendants.

He asks the Court to decide on only one issue - re interpretation of Clause 8 of the two agreements.

Produces bundle of documents marked AB.(a) Agreement on pages 1 to 15. (b) Agreement on pages 16 to 32.

Clause 8 of the first agreement and Clause 8 of the second agreement.

20

In AB there is an agreement between the defendants and Syarikat Kemajuan Perumahan Pegawai-Pegawai Kerajaan Sendirian Berhad on pages 33 to 35.

Another agreement which the plaintiff will refer in the agreement is at page 46.

Refers to affidavit of Wong Choon Yah at pages 75 to 82. This will be referred to by the plaintiffs.

Produces two site plans covering the first two Agreements - marked P1 and P2.

30

Produces also a bundle - particulars and quantum. This may have to be referred to in construing Clause 8 not in regard to quantum.

Bundle 1 is relevant to agreement (1) - marked P3. Bundle 2 is marked P4.

In the High Court

The first agreement refers to the Gombak Scheme and the second agreement refers to the Ampang Scheme.

No. 4

Notes of Proceedings

The defendant company are housing developers. They entered into an agreement to construct houses - first agreement and second agreement.

31st July 1975  
(continued)

10 The whole of the Gombak Scheme consists of 385 units. One hundred and forty-three houses have been sold to the plaintiffs. All those shaded in red on P1 have been sold.

Ampang Scheme: The total is 110 units. Sixty-five units were sold to the plaintiffs. They are shaded in red in P2.

P3 and P4: P3 - Gombak Scheme - first agreement. P4 - Ampang Scheme - second agreement.

20 P3: Abandons claim on item 15, page 2 \$36,270.00 - Maintenance of roads and drainage.  
P3: Item 6 page 3 \$17,550 - Maintenance of roads and drainage.

First Agreement Clause 8: Mr. Khoo reads out Clause 8. An identical clause appears on the second agreement (Clause 8).

Defendants' contention: Clause 8 is wide. The true meaning of that clause is that all expenses incurred by the developer in providing houses with water are covered by the meaning of Clause 8.

30 Water: Refers to P1. The red and blue lines indicate water supply - red: supply; blue: rising main. The pump house is on the left hand corner. The elevated tank is on the right hand corner.

40 Defendants' contention: Outside the scheme and up to the boundary of the scheme, the Public Works Department has got water mains running. The defendants are asking the purchasers to bear the cost of bringing and constructing a water reticulation system which connects the whole scheme to the Public Waterworks Scheme and which will bring water effectively to all the schemes.



In the High  
Court

—  
No. 4

Notes of  
Proceedings

31st July 1975  
(continued)

In the Gombak Scheme, the contour and the elevation is such that, to provide the houses with proper and adequate supply, it is necessary to construct a pump house and an elevated tank.

The defendants are entitled to receive payments in respect of constructing and supplying (laying of water mains). In P3 are itemised various aspects of water claims which are enumerated as items (4) to (14). Item (14) (reticulation) is the largest item. Reticulation means the laying of pipes through the scheme from which piped houses will be supplied with water. 10

Defendants' claim: They have worked out the costs for the whole scheme and the apportioned cost per unit. The costs claimed are not the costs for the whole scheme.

The defendants' further contention is that the costs relate to the pump house and the elevated tank. These costs are covered. Without the pump house and the elevated tank there would not be supply of water. 20

True intent must mean more than just the laying down of pipes. A housewife on turning on the tap must find water flowing out from it. The developer therefore is bound to construct a system of piping to enable a household to get a supply of water.

A similar agreement applies to the Ampang Scheme except that there is no blue line, no pump house and no elevated tank - unnecessary. 30

The red line indicates the water mains laid by the defendants. Page 3 of P3, item 7 - Reticulation - water mains to 65 M.A.F. houses \$24,046.80 - These are costs the defendants are entitled to.

Electricity: For defendants' contention, see P3, Gombak Scheme, items 2 and 3. Defendants deducted the amount received (\$4,500) from the Electricity Board for substation. The title for the substation had already been transferred to the Board. 40

Posts: No charge is made for the supply if the scheme is big. It is absorbed by the Board.

The claim is only for construction costs of substation. The costs are part and parcel of supply of electricity.

In the High Court

---

Ampang Scheme: (Page 3 P3). Items 1, 2 and 3 are for a smaller scheme. The N.E.B. levied a charge against the developer for connection of supply from N.E.B. substation to the houses.

10 Says that for position in housing scheme see Housing Developers (Control and Licensing) Act, 1966 (Laws of Malaysia Act 118 effective from 29.8.1969); Housing Developers (Control and Licensing) Rules, 1970 rule 12(1) effective from 15.7.1970 (P.U.(A) 268 1970). This rule 12(1) was not in existence then. The earlier rules are 1969 rules.

Raja Abdul Aziz:

Plaintiff's contention: Contrary to Clause 8 - the words "such connection" are material words.

20 The words "inclusive of" must be governed by the words "such connection" on the principle the lesser cannot include the greater.

First agreement: Clause (1) contains the price to be paid. Nowhere in the agreement is it shown the cost of land per square foot. On page 11 of pleadings paragraph 8 (Statement of Defence and Counter-Claim) it is stated that the land was to be adjusted at \$1.80 per square foot. This in plaintiffs' contention would include infrastructure such as items claimed by the defendants.

30 Refers to second agreement item (133) on page 32 of bundle of documents. If worked out it comes to \$2.50 per square foot. This is confirmed by the defendants' counter-claim - see page 12 of bundle of pleadings paragraph 12(c).

The issue here is if the costs of \$1.80 and \$2.20 for Gombak and Ampang are for developed land (i.e. inclusive of infrastructure), then Clause 8 must be construed to mean connection from the boundary of each lot to the house on each lot.

40 Pl: The contention is that the costs the plaintiffs have to pay are from the red line to house on each lot.

In the High Court

No. 4

Notes of Proceedings

31st July 1975  
(continued)

Plaintiffs' Evidence

Yeap Yooi Eng  
Examination

Raja Abdul Aziz seeks to adduce evidence on the surrounding circumstances pertinent to the relevant clause.

No. 5

Yeap Yooi Eng

PW1: Yeap Yooi Eng, affirmed and speaks in English. 52 years. Engineer - own company.

From 1955 to 1974 I worked for the Public Works Department. Between 1969 to 1971 I was attached to the Treasury to look after the Kampung Tunku Scheme - the Government Officers' Housing Society's Scheme. Between 1971 to 1974 I was the technical manager of Syarikat Kemajuan Perumahan Pegawai-Pegawai Kerajaan Sendirian Berhad.

10

I am familiar with the prices of land. In 1966 at Gombak undeveloped land price varied from \$6,000 to \$10,000 per acre. The cost of development per acre inclusive of roads, drains, water supply, sewerage and electrical supply will vary from \$10,000 to \$15,000 per acre.

20

Costs - taking the higher figure, the costs would be \$25,000 per acre. The percentage of land for sale minus reserves, open area, drains and roads etc. varied from 50% to 60%. On 60% it would be approximately \$26,000 per acre. The cost for developing the land for sale would be approximately \$1.00 per square foot.

In Ampang it would be slightly (\$2,000 to \$3,000) higher per acre undeveloped. The costs of development would be approximately the same. Therefore the cost of developing the land for sale would be approximately \$1.10 or \$1.12 per square foot.

30

The price in 1966 was lower than the price in subsequent years. In the P.K.N.S. Scheme in Petaling Jaya in 1966, the price of developed land was 0.80 cents per square foot, from 1969

to 1971 \$1.20 per square foot. In Kampung Tunku in 1966 the price of developed land was \$1.00 per square foot, from 1969 to 1971 \$1.40 per square foot.

In the High Court

Plaintiffs' Evidence

No. 5

Yeap Yooi Eng Examination (continued)

In Bungsar Park from 1969 to 1971 the price was \$1.80 to \$2.00 per square foot.

10 On 9.7.71 Syarikat Kemajuan Perumahan Pegawai-Pegawai Kerajaan Sendirian Berhad bought from defendants 94 developed lots in Bungsar Park at \$1.6 million. The price worked out to \$1.90 per square foot. The land is nearer to the centre of the town than either Gombak or Ampang.

In my opinion the price in Bungsar Park in 1966 was lower than \$1.90 per square foot.

In 1971 Syarikat Kemajuan Perumahan Pegawai-Pegawai Kerajaan Sendirian Berhad also bought land in Damansara inclusive of a number of developed lots (114 lots) at \$1.80 to \$2.00 per square foot. This land was nearer to the centre of the town.

20 In December 1971 Syarikat Kemajuan Perumahan Pegawai-Pegawai Kerajaan Sendirian Berhad negotiated for the purchase of land adjacent to the two schemes. The land was developed with infrastructure. The price agreed was \$1.40 per square foot. The agreement was not concluded.

Refers to page 81 AB - letter dated 4.12.1971 - \$1.30 per square foot.

This land agreed to be purchased appears in P1 and P2 in the coloured portion.

30 When a developer sells a piece of land with a house to be built by him, it is the practice for him to provide infrastructure. It is an obligation on him to construct the house according to specifications until the house is ready for occupation. When the house is ready, the house owner will have to seek the assistance of the developer who has in his employ licensed plumbers and licensed wiremen, to obtain application forms from the Public Works Department's Waterworks Department and the National Electricity Board for water and electricity. The application forms are prepared by licensed people and signed by the house owner and on approval by the authorities, the house owner

40

In the High  
Court

will have to pay the costs of connection and  
deposit for supply to the authorities.

Plaintiffs'  
Evidence

Connection is then made from the boundary of  
the house to the reticulation pipe. Payment will  
have to be made to the appropriate authorities.

No. 5

Yeap Yooi Eng  
Examination  
(continued)

Cross-examination by En. Ronald Khoo:

Cross-  
examination

I am not a licensed valuer of land. The  
schemes mentioned are schemes related to a co-  
operative society in respect of P.K.N.S. a quasi-  
government body.

10

The land was purchased and developed by a  
co-operative society and Syarikat Kemajuan  
Perumahan Pegawai-Pegawai Kerajaan Sendirian  
Berhad - not as in the present case.

In and around Kuala Lumpur there were other  
schemes developed by private developers. Prices  
varied from developer to developer.

Price in respect of land is really a matter  
of negotiation between a buyer and a seller. Each  
sale is dependent upon its own particular  
circumstances.

20

An aborted purchase means a sale never  
completed.

Re-examination

Re-examination:

Bungsar Park was purchased as a developed land  
with infrastructure at \$1.90 per square foot.  
Syarikat Kemajuan Perumahan Pegawai-Pegawai  
Kerajaan Sendirian Berhad built its own houses.

Gombak and Ampang were purchased as developed  
land without houses on the same basis as the land  
in Bungsar Park. In the case of Bungsar Park,  
there was an agreement. The price of \$1.30 per  
square foot was agreed to between Syarikat  
Kemajuan Perumahan Pegawai-Pegawai Kerajaan  
Sendirian Berhad and the defendants.

30

## Notes of Proceedings

In the High  
Court—  
No. 4Notes of  
Proceedings

31st July 1975

Raja Abdul Aziz Addruse submits:

Refers to the Ampang Agreement on page 16 AB (the third line from the bottom). Says that the words "and intends to develop the said Lands as a housing estate" show that the developer (defendant) intends to develop the land as a housing estate.

10 Next, Clause 5 on page 19 AB shows the developer's obligation to provide what is stated in its own costs but the purchaser has the right to make connections.

Clause 8 does not come into effect until the house is completed. At that stage connection will be supply to houses and all payments involved made to the appropriate authority.

20 Evidence: The land was sold at \$1.30 per square foot with infrastructure. At Bungsar Park the land was sold at \$1.90 per square foot with infrastructure. On the basis at \$1.80 - Gombak - \$2.50 Ampang must include infrastructure having regard to the position of the agreement. The words are "inclusive of" in Clause 8.

Refers to Commissioners of Customs and Excise v. Savoy Hotel Ltd. (1966) 2 All E.R. page 299 at page 300 H5 - "That first impression and initial ....."; page 302 A3.

30 Refers to Straits Steamship Co. Ltd. v. Aziz bin Ismail & Ors. (1954) M.L.J. p.228 at p.230 - "It may be that Clause C is unfortunately worded, but I cannot agree that it is ambiguous or that the words 'an employee will be guaranteed a payment' should be construed as meaning an employee would be paid. In my view these words mean that the Company gave an undertaking and that it would be straining the ordinary meaning of the word "including" used in Clause C, to construe it as meaning "in addition to.""

40 Contention: Costs of connection between the boundary to the house - The words "inclusive of" cannot enlarge expenses to be borne by purchaser to include costs of reticulation for the whole scheme.

In the High Court

No. 4

Notes of Proceedings

31st July 1975 (continued)

If the Court does not agree the laying of water mains should not include the pump house and elevation tank.

The word "including" in the statute is used to enlarge the scope of a particular word. Here we are dealing with the word of Clause 8.

Mr. Khoo in reply refers to Swarup's Legislation and Interpretation, first edition, pages 170/172 where the word "include" is discussed and its meaning examined. Says that when looking at Clause 8 one must look at the whole agreement. Clause 5 itself does not indicate that the land is sold with infrastructure. Clause 8 not only allows connecting costs but inclusive costs of laying.

10

Court: Reserve judgment.

Sgd. Abdul Hamid

Judge  
High Court Malaya  
Kuala Lumpur.

Certified true copy

20

Sd. Illegible

Secretary to Judge  
Kuala Lumpur  
13th November 1975

No. 6

Judgment

2nd October 1975

No. 6

Judgment

JUDGMENT OF ABDUL HAMID, J.

In this case the only issue I am asked to decide is the construction of Clause 8 of the agreement of March 15, 1966 and another identical clause contained in the agreement of August 23, 1966. These clauses are relevant to the defendants' case as their counterclaim is founded upon them.

30

The clause reads - "The Company further undertakes to apply on behalf of the Purchaser for

the connection to the said houses of such water and electrical services as are provided by the local authority but all costs of the making of such connections inclusive of the costs of laying water mains and of electric supply and metering thereof shall be borne and paid by the Purchaser."

In the High  
Court

          
No. 6

Judgment

2nd October  
1975

(continued)

10 It is revealed that the defendants were proprietors of lands which they were to develop as a housing estate. The defendants were to subdivide the lands into so many housing lots and to construct for the plaintiffs dwelling houses which the plaintiffs agreed to purchase.

20 The agreements relate to defendants' lands in Gombak and Ampang. En. Ronald Khoo on behalf of the defendants contended that the true meaning of that clause is that all expenses connected with supply of water and electricity will be borne by the plaintiffs. He submitted that the purchaser shall bear the costs of bringing and constructing a water reticulation system which connects the whole scheme to the Waterworks Scheme. As regards the Gombak Scheme he submitted that the contour and elevation was such that to provide the houses with proper and adequate supply, it was necessary to construct a pump house and an elevated tank. It is the defendants' contention that the costs the purchaser shall bear must include the costs to construct the pump house and the elevated tank.

30 As for electricity the claim is for the costs of constructing substation as part and parcel of supply of electricity. En. Khoo submitted that the N.E.B. levied a charge against the developer for connection of supply from the N.E.B. substation to the houses.

40 On the other hand Raja Abdul Aziz counsel for the plaintiffs drew Court's attention to the words "such connections" used in Clause 8. He emphasised that the words "inclusive of" appearing therein must be governed by the words "such connections" on the principle the lesser cannot include the greater.

Referring to the agreement he submitted that nowhere in the agreement there is shown the cost of land per square foot. Nonetheless the defendants have stated in their defence and counterclaim that the land was to be adjusted at \$1.80 per square foot. It is therefore the plaintiffs' contention



In the High  
Court

          
No. 6

Judgment

2nd October  
1975  
(continued)

that in that event it must include infrastructure such as items claimed by the defendants.

With reference to the second agreement the cost per square foot, if worked out, would come to \$2.50.

Raja Abdul Aziz submitted that the issue here is if the costs of \$1.80 and \$2.50 for Gombak and Ampang respectively were costs of developed lands (inclusive of infrastructure) then Clause 8 must be construed to mean connection from the boundary of each lot to the house. 10

Evidence was led by the plaintiffs through engineer Yeap Yooi Eng who from 1955 to 1974 worked for the Public Works Department, between 1969 to 1971 was attached to the Treasury looking after the Kampung Tunku Scheme and between 1971 to 1974 acted as Technical Manager of Syarikat Kemajuan Perumahan Pegawai-Pegawai Kerajaan Sendirian Berhad. He stated that when a developer sells a piece of land with a house to be built by him, it is the practice for him to provide infrastructure. As regards water the connection is made from the boundary of the house to the reticulation pipe. 20

En. Yeap also gave evidence to the effect that the Gombak and Ampang lands were purchased as developed lands. However, he stated that price in respect of land is really a matter of negotiation between a buyer and a seller.

Raja Abdul Aziz in his further submission drew my attention to certain words "an intention to develop the said lands as a housing estate" in the Ampang agreement to support his contention that the defendants intended to develop the lands as a housing estate with infrastructure. 30

After hearing the submissions made by both counsel I form the view that in the instant case it seems proper to construe Clause 8 in the light of the whole of the agreement in order to determine the intention of the parties. I hasten to add, however, that I am conscious of the principle contained in the following passages in Chitty on Contracts, General Principles, 22nd edition. A passage at page 23 under the heading "The terms of the contract must be certain" reads - 40

"It is a well-established rule that the parties must make their own contract, and this means that they must agree as to its terms. If therefore the terms are unsettled or indefinite, the contract cannot be upheld. For although the courts always seek to implement the intentions of the parties, they will not make a contract for them in order to do this."

In the High  
Court

—  
No. 6

Judgment

2nd October  
1975

(continued)

10 Further on under the heading of "Qualifications on the requirement of certainty" it is stated that -

"It must however be emphasised that the courts seek to uphold bargains wherever possible. The principles governing their approach were explained as follows by Lord Wright in Hillas & Co. Ltd. v. Arcos Ltd. (1932) 147 L.T. 503, 514. See also Fridman, 76 L.Q.R. 521 (1960): 'Business men often record the most important agreements in crude and summary fashion; modes of expression sufficient and clear to them in the course of their business may appear to those unfamiliar with the business far from complete or precise. It is accordingly the duty of the court to construe such documents fairly and broadly, without being too astute or subtle in finding defects; but, on the contrary, the court should seek to apply the old maxim of English law, verba ita sunt intelligenda ut res magis valeat quam persat. That maxim, however, does not mean that the court is to make a contract for the parties, or to go outside the words they have used, except in so far as there are appropriate implications of law.'"

40 To illustrate the principle that the courts seek to implement the intentions of the parties, the learned author observed that three points must be made. One of them which appears at page 24 paragraph 50 seems pertinent to the present case. It reads -

"First, the fact that an essential term of the contract has not been specifically agreed upon may not be fatal if that term can be determined otherwise than by a future agreement between the parties. The courts may, for instance, consider the previous dealings

In the High Court

No. 6

Judgment

2nd October 1975 (continued)

between them or the custom of the trade in question, making allowances for a particular commercial environment .....

In the instant case the plaintiffs adduced evidence through engineer Yeap to support their contention that sales of developed lands would include infrastructure such as items claimed by the defendants. Such evidence may properly be admitted and indeed I admitted and considered the evidence, nevertheless I am unable to hold that Yeap's testimony has lent much weight to the plaintiff's contention for the following reasons: Firstly, it is not in dispute that the agreements between the plaintiffs and the defendants were entered into well before July 15, 1970 at which time there was no rule similar to rule 12(1)(1) of the Housing Developers (Control and Licensing) Rules, 1970 [P.U.(A) 268/1970] which requires every contract of sale to contain provisions binding on the licensed housing developer, at his own cost and expenses to construct or cause to be constructed in accordance with the requirements and standards of the appropriate authority or other public authorities the roads, driveways, drains, culverts, water mains and septic tanks or sewerage mains or sewerage plants serving the housing accommodation erected for the purchaser. Secondly, Yeap himself in his testimony had not expressly stated that the sale of the lands in question would include infra-structure. In fact he conceded that price in respect of land is really a matter of negotiation between a buyer and a seller. Thirdly, there was no evidence adduced by the plaintiffs to show previous dealings between them and the defendants.

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In the circumstances I feel that the best approach is to construe Clause 8 in the light of the whole of the agreement and will do so fairly and broadly within the words used by the parties in order to implement their intentions.

40

Looking at the agreement there is one particular clause which may usefully be referred to in determining the issue under consideration. I refer to Clause 5 which reads - "The Company undertakes that the said Lots are sold ..... TOGETHER with free right and liberty for the Purchaser its successors and assigns and its and their servants agents ..... in common with the

Company ..... for all purposes whatsoever connected with the use and enjoyment of the said Lots ..... to pass and repass along and over and upon all roads shown on the Layout Plan TOGETHER also with full right and liberty to make all necessary connections and thereafter to use in a proper manner the ..... pipes cables or wires laid or constructed by the Company under or over the said roads for the purpose of supply of water electricity ..... to ..... the said Lots .....". (The underlining is mine).

In the High Court

No. 6

Judgment  
2nd October  
1975  
(continued)

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I have considered very carefully the submissions made by counsel for the plaintiffs to the effect that Clause 5 shows the developer's obligation to provide what is stated at their own costs but the purchaser has the right to make connections. On closer examination of Clause 5 it is revealed that there are two limbs to it - (a) a stipulation to the effect that the purchaser of the lots is entitled to free right and liberty to pass and repass along the roads constructed by the defendants and (b) a further stipulation to the effect that the purchaser is entitled to full right and liberty to make all necessary connections and thereafter to use the pipes cables or wires laid or constructed by the company under or over the said roads for the purpose of supply of water and electricity services to the said lots. The word "free" appears only in the first limb and is not used in the second limb. It would therefore seem to me that whilst the plaintiffs are entitled under the first limb to free right and liberty to use the roads, they are not expressly given free right to use the pipes laid or constructed by the defendants although they have full right to make the necessary connections. Such right must therefore be viewed in the light of Clause 8. Looking at the words "The Company undertakes...." appearing at the commencement of Clause 5 and the words "The Company further undertakes...." appearing in Clause 8 it is significant that the words "The Company further undertakes...." were used with special reference to Clause 5. Reading the second limb of Clause 5 the words used seem to signify that as regards the costs of laying water mains the parties shall be bound by the terms and conditions provided under Clause 8.

In my view Clause 8 only imposes an obligation upon the defendants to apply on behalf of the

In the High  
Court

—  
No. 6

Judgment

2nd October  
1975

(continued)

purchaser for the connection to the said houses of such water and electrical services but the costs of the making of such connections inclusive of the costs of laying water mains and of electric supply and metering thereof shall be borne and paid by the purchaser, i.e., the plaintiffs.

Raja Abdul Aziz argued that the word "inclusive" must be governed by the words "such connections" on the principle that the lesser cannot include the greater. It is the plaintiffs' contention that the words "inclusive of" cannot enlarge expenses to be borne by the purchaser to include costs and reticulation for the whole scheme. On the other hand, En. Ronald Khoo urged the Court to examine the meaning of the word "include" as discussed in Swarup's Legislation and Interpretation first edition pages 170/172 and he proceeded to urge the Court to view Clause 8 in the light of the whole of the agreement. He pointed out that Clause 8 does not indicate that the land is sold with infra-structure. It is the defendants' contention that Clause 8 not only allows connecting costs but also the costs of laying the reticulation pipes. In my view the words "inclusive of" in the instant case must be construed to mean, read in the light of Clause 5, 'in addition to' or 'apart from.' Moreover looking at the whole of the agreement I am inclined to think, indeed it is my judgment that the defendants' obligation under Clause 5 only extends to providing free right and liberty to use roads constructed by the company and while it is their obligation to lay pipes cables wires etc. for purposes of water and electricity supply, I am constrained to think that upon fair and reasonable construction, such obligation although it extends the right to make connections, it does not however extend to providing free right to use water mains laid by the defendants. In my judgment the plaintiffs are liable to pay not only the costs of such connections but also the costs of the laying of the water mains. Therefore not only the defendants' counterclaim for the costs of making connections for water and electricity services from the road to the houses must be allowed but also the costs of laying water mains, i.e. the reticulation pipes and the costs of laying electricity wires, if any, were incurred.

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10 The defendants are also asking the Court to allow the costs of the construction of pump house and elevated tank and also the costs incurred in connection with the power substation. To my mind these are substantive items involving considerable costs and as such it was for the parties to stipulate by inserting clear terms in the agreement. In other words, the parties ought to have made their own contract. To my mind the Court would be straining the words used in Clause 8 to include the costs incurred by the defendants for such items, indeed it amounts to the Court making contract for the parties. I would therefore dismiss the defendants' counterclaim in regard to the costs for the pump house, the elevated tank and the costs incurred in connection with the power substation.

Half costs is awarded to the defendants.

20 Sgd. (ABDUL HAMID)  
JUDGE,  
HIGH COURT MALAYA,  
KUALA LUMPUR.

Dated October 2, 1975

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Raja Abdul Aziz bin Raja Addruse of Messrs.  
Rithauddeen & Aziz, Kuala Lumpur, for plaintiffs.

En. Ronald T.S. Khoo of Messrs. Shearn, Delamore  
& Co., Kuala Lumpur, for defendants.

In the High  
Court

—  
No. 6

Judgment

2nd October  
1975

(continued)

28.

In the High  
Court

No. 7

        
No. 7

Order

Order

BEFORE THE HONOURABLE MR. JUSTICE ABDUL HAMID

2nd October  
1975

THIS 2ND DAY OF OCTOBER, 1975

IN OPEN COURT

O R D E R

The Counterclaim in this Suit coming up for hearing on the 31st day of July, 1975 in the presence of Raja Abdul Aziz Addruse of Counsel for the Plaintiffs and Mr. Ronald T.S. Khoo of Counsel for the Defendants AND UPON READING the Pleadings herein AND UPON HEARING the evidence and arguments of Counsel aforesaid IT WAS ORDERED that the Counterclaim do stand adjourned for Judgment and the same coming on for Judgment this day in the presence of Raja Abdul Aziz Addruse of Counsel for the Plaintiffs and Mr. Ronald T.S. Khoo of Counsel for the Defendants IT IS ORDERED that by Clause 8 of the Agreements dated the 15th day of March, 1966 and the 23rd day of August, 1966, both entered into between the Plaintiffs and the Defendants, the Plaintiffs are liable to pay to the Defendants, in addition to the costs of the making of connections for water and electrical services, the costs of laying water mains and electrical wires AND IT IS ORDERED that subject only as aforesaid the Counterclaim be and is hereby dismissed AND LASTLY IT IS ORDERED that half the costs of the Counterclaim as taxed by the proper officer of this Court be paid by the Plaintiffs to the Defendants.

GIVEN under my hand and the Seal of the Court this 2nd day of October, 1975.

(L.S.)

Sgd.

SENIOR ASSISTANT REGISTRAR  
HIGH COURT, KUALA LUMPUR

This Order is filed by Messrs. Rithauddeen & Aziz, solicitors for the Plaintiffs, whose address for service is 3rd Floor, Wisma Batik, Jalan Tun Perak, Kuala Lumpur.

No. 8

Notice of Appeal

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA LUMPUR (APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 148 OF 1975

BETWEEN

MALAYSIAN ARMED FORCES CO-OPERATIVE HOUSING SOCIETY LTD. ... APPELLANT

AND

10 NANYANG DEVELOPMENT (1966) SDN.BHD. RESPONDENT

(In the Matter of Kuala Lumpur High Court Civil Suit No. 807 of 1971

BETWEEN

MALAYSIAN ARMED FORCES CO-OPERATIVE HOUSING SOCIETY LTD. PLAINTIFF

AND

NANYANG DEVELOPMENT (1966) SDN. BHD. DEFENDANT)

NOTICE OF APPEAL

20 TAKE NOTICE that the Malaysian Armed Forces Co-operative Housing Society Ltd, the Appellant above-named, being dissatisfied with the decision of the Honourable Mr. Justice Abdul Hamid given at the High Court, Kuala Lumpur, on the 2nd day of October, 1975, appeals to the Federal Court against such part only of the said decision as decides:-

- 30 (1) that under Clause 8 of each of the agreements dated the 15th day of March, 1966 and the 23rd day of August, 1966, both entered into between the Appellant and the Respondent, the Appellant is liable to pay not only the costs of making connection for water and electricity services from the road to the houses therein purchased but also the costs of laying water mains (i.e. reticulation pipes) and the costs of laying electricity wires, if any; and

In the Federal Court

No. 8

Notice of Appeal

30th October 1975



In the  
Federal Court

No. 8

Notice of  
Appeal  
30th October  
1975  
(continued)

(2) costs.

Dated this 30th day of October, 1975.

Sgd. .....	Sgd. .....
Signature of Appellant	Signature of solicitors for Appellant

To:

1. The Chief Registrar,  
Federal Court, Malaysia,  
Kuala Lumpur

and to

2. Senior Assistant Registrar,  
High Court, Malaya,  
Kuala Lumpur

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and to

3. Messrs. Shearn, Delamore & Co.,  
Advocates & Solicitors,  
2, Benteng,  
Kuala Lumpur  
(solicitors for the Respondent).

The address for service of the Appellant is  
c/o Messrs. Rithauddeen & Aziz, Advocates &  
Solicitors, Tingkat Wisma Batik, Jalan Tun  
Perak, Kuala Lumpur.

20

No. 9

Memorandum  
of appeal

December,  
1975

No. 9

Memorandum of Appeal

The Malaysian Armed Forces Co-operative  
Housing Society Ltd., the Appellant abovenamed,  
appeals to the Federal Court against part of the  
decision of the Honourable Mr. Justice Abdul Hamid  
given on the 2nd day of October, 1975, on the  
following grounds:-

30

1. The learned judge was wrong in fact and in  
law in holding that the evidence of Yeap Yooi  
Eng did not lend weight to the Appellant's  
contention respecting the construction to be  
given to Clause 8 of the agreements dated the  
15th day of March, 1966, and the 23rd day of  
August, 1966, and in not taking such evidence

into account when considering the construction to be given to the said Clause.

In the  
Federal Court

2. The learned judge misdirected himself and erred in law and in fact in holding:-

No. 9

Memorandum  
of Appeal

December  
1975

(continued)

10 (a) that under Clause 5 of each of the aforementioned agreements, the Appellant is not entitled to exercise the full right conferred on it to make the necessary connection to the pipes, cables or wires laid by the Respondent, except upon payment of the costs of the laying of such pipes, cables and wires; and

(b) that the right to make the connections as conferred on the Appellant by Clause 5 of each of the agreements is regulated or governed by Clause 8 of each of the said agreements.

- 20 3. In giving to Clause 8 of each of the agreements the construction he did, the learned judge failed to direct his mind to the following:-

(a) that the lands purchased by the Appellant under the aforesaid agreements formed part of larger pieces of land which the Respondent intended to develop as housing estates and each of the said agreements recited that fact;

30 (b) that the purchase price specified in each of the agreements was expressly stated and agreed by the Appellant and the Respondent as being the total purchase price;

40 (c) that there is nothing in Clause 8 of each of the agreements to preclude the Appellant or its respective members from itself or himself applying to the appropriate authorities for permission to make the necessary connections and, in that event, the construction so given to the said Clause by the learned judge would result in absurdity;

(d) that Clause 8 of each of the agreements relates to and deals with the making of applications to the appropriate authorities

In the  
Federal Court

—  
No. 9

Memorandum  
of Appeal

December  
1975  
(continued)

by the Respondent on behalf of the Appellant or its members, for the connection of water and electrical services to the individual houses purchased.

- 4. The learned judge erred in holding that the expression "inclusive of" in Clause 8 of each of the said agreements meant "in addition to" or "apart from", and in so holding the learned judge has failed to give to the said Clause 8 a construction harmonious and in conformity with the other provisions of the said agreements.

10

Dated this                    day of December, 1975.

.....  
Solicitors for the  
Appellant abovenamed.

To:  
The Chief Registrar,  
Federal Court,  
Malaysia,  
Kuala Lumpur

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and to  
The Respondent abovenamed and/or  
its solicitors,  
Messrs. Shearn, Delamore & Co.,  
2, Benteng,  
Kuala Lumpur.

This Memorandum of Appeal is filed on behalf of the Appellant abovenamed by Messrs. Rithauddeen & Aziz, Advocates & Solicitors, whose address for service is 3rd Floor, Wisma Batik, Jalan Tun Perak, Kuala Lumpur.

30

No. 10

Notes of Argument recorded by Suffian, L.P.

Wednesday, 14th January, 1976

Raja Abdul Aziz with Zainur Zakaria for  
appellant.

Ronald Khoo for respondent.

Raja Abdul Aziz addresses

Facts.

Page 58, agreement.

10 Page 59 - 107 lots in Gombak.

Another agreement, page 73 - 65 lots in Ampang.

Counterclaim, page 9.

Only one issue - construction of clause 8  
whether defendants entitled to items on pages 19-20  
- totalling about \$74,000. Defendants say they  
are. Plaintiffs say not.

Judgment page 56, page 57 - plans at page 49E.

Submit respondents not entitled to cost of  
water mains and electricity wires.

20 Where ambiguous, Court should look at back-  
ground and surrounding circumstances: (1971)  
3 AER 237 Prenn v. Simmonds, H.L. 241 f2.

Page 63, page 78.

Rental, page 58. Clause 1, page 59.  
Schedule, page 72.

Mode of payment, clause 2(a), page 59. Note  
word "total".

30 Clause 4, page 61. No price per square foot  
mentioned but not disputed it was \$1.80 - page 6,  
para. 1 of Statement of Claim - para. 8 of  
counterclaim, page 9.

Ampang land agreement, page 73. Preamble,

In the  
Federal Court

        
No.10

Notes of  
argument  
recorded by  
Suffian, L.P.

14th January  
1976

In the  
Federal Court

—  
No.10

Notes of  
argument  
recorded by  
Suffian, L.P.

14th January,  
1976  
(continued)

paras. 1, 2, 3, 4. Schedule, page 89, column 3.  
Cost of land \$2.50 per square foot confirmed by  
defendants, page 10, para. 12(c).

Clause 5, page 61. Submit infrastructure was  
respondent's responsibility.

Page 62.

Because of mode of payment, total liability  
of appellants is limited to connections to lot  
boundary, to total purchase price of each house.  
After last payment as in schedule, nothing more is  
due. 10

Clause 12, page 65. Note words "equal to the  
full value of such houses".

Appellants only liable to pay to the appropri-  
ate authorities, not to the respondents, connection  
charges - when possession has been given by  
respondents.

Clause 8, page 63. Respondent applies on  
behalf of purchaser for connection and purchaser  
reimburses respondent. "Such connections" refer  
to internal, up to lot boundary. 20

Commissioner (1966) 2 AER 299 on word  
"including". Page 300 H3 to page 301 C, page 301 E.

(1965) 1 AER 210. East Ham Borough Council  
219 G3 to H4.

(1900) A.C. 260, 267 Lord Davey.

Glynn (1893) A.C. 351, 357. Main purpose of  
contract is important and must be given effect to.

Suisse (1966) 2 WLR 944, 986 B3.

Sze Hai Tong Bank (1959) AC 576, 587, para 1. 30

Clause 5, page 61.

Page 46 D3. Judge on word "free".

"Free" omitted from 2nd limb because authori-  
ties will not give free water etc. connections.

(Adjournment for lunch)

Court should look at factual background:

River Wear Commissioner (1876-7), AC 743, 763.

Butterfly Co. Ltd. (1910) AC 377, 382.

PW.1's evidence on page 30 A5, page 28 A2, page 29 E4, page 28 A to D3, page 29 A4, page 29 D5, page 30 B5, page 27 D (familiar with prices of land).

Respondent was developing the land.

10 Respondent sold land more expensive than other lands.

Price of each lots was described as total price.

"Metering" in clause 8 refers to individual house bought.

Clause 8. If purchaser had applied himself, question of reimbursement does not arise.

Khoo addresses

I agree whole agreement must be looked at when construing clause 8.

20 Purchaser in agreement means appellant, but sometimes it means individual buyers.

In 1970 Housing Developers (Control and Licensing) rules were enacted. Section 12(1) - developer must meet all infrastructure cost.

Before then it was practice for developers to pass such costs to buyer. Transactions here were before 1970.

30 Price in the end depends on agreement. Varies from company to company, place to place, time to time.

In first agreement plaintiff bought about 1/3 and in second about 1/2 the houses.

Plaintiff bought in bulk.

Advantageous to buy in bulk - hence lower prices.

In the  
Federal Court

\_\_\_\_\_  
No.10

Notes of  
argument  
recorded by  
Suffian, L.P.

14th January,  
1976

(continued)

In the  
Federal Court

          
No.10

Notes of  
argument  
recorded by  
Suffian, L.P.

14th January  
1976  
(continued)

Clause 8, page 68, not ambiguous - "inclusive of" mean "in addition to".

Clause 12 "and the Purchaser etc." suggest that Purchaser should also pay something additional to prices in the schedule.

Price in schedule does not include infrastructure.

Parties had not said in agreement price included infrastructure.

Stroud's Judicial Dictionary on "include", vol. 3, 4th edition, pp.1333-4. On "namely", page 1723. Including imports addition.

10

76 LQR 521.

Hillas (1932) vol. 147 LTR page 503. Parties here understood meaning of contract.

Foley (1934) 2 KB 1.

23rd edition, page 44, para. 84, Chitty on Contract.

Respondent charged appellant only for pipes near houses bought by appellant - not for all pipes for entire estate.

20

Judge disallowed claim for cost of pump house and elevated tank on Gombak Scheme.

Clause 5, page 61.

Clause 9 makes clear respondent responsible for cost of roads.

Raja Aziz replies

Purchaser in clause 8 refers to individual buyers members of the Society, if so it's absurd to expect them to pay for the pipes.

30

(Khoo: Purchaser is defined by agreement as the plaintiff, not individual members - but I concede that sometimes it could mean individual members.)

Clause 2(a)(4), page 72.

C.A.V.

Signed (M. Suffian) 14.1.76.

No.11

Judgment of Suffian, L.P.  
(read by Wan Suleiman, F.J.)

In the  
Federal Court

—  
No.11

Judgment

21st February  
1976

10 The defendant is a housing developer and the  
plaintiff a housing co-operative society. The  
defendant had a large piece of land in Gombak and  
another in Ampang which it wished to develop as  
housing estates. The plaintiff had a large sum of  
money made available by Government and with that  
money it bought houses from the defendant, for the  
society's members who are officers and men of the  
armed forces. It agreed to buy 117 units (i.e.  
about one-third of the houses to be built by the  
defendant in Gombak) and 65 units (i.e. about half  
of those in Ampang). The society entered into  
several agreements with the developer for this  
purpose, and it was agreed between them that the  
society pay some money in advance. There were  
disputes between the society and the developer,  
20 and the society sued the developer. The main  
dispute between the parties has been settled out  
of court, and here we are concerned only with the  
developer's counterclaim against the society. The  
developer won part of its counterclaim and lost  
part. As regards the part that it won, the society  
has appealed to us. So the dispute between them  
has been greatly narrowed down.

30 It turns on the construction of article 8 of  
the two main written agreements between them. The  
article is identical in terms and provides as  
follows:-

40 " The company [meaning the developer] further  
undertakes to apply on behalf of the purchaser  
for the connection to the said houses /i.e.  
those to be bought from the developer/ of such  
water and electrical services as are provided  
by the local authority, but all costs of the  
making of such connections inclusive of the  
cost of laying water mains and of electric  
supply and metering thereof shall be borne and  
paid by the purchaser."

Because of the words underlined, as regards  
water supply it was submitted on behalf of the  
developer that under clause 8 the society must pay  
the cost of bringing and constructing a water  
reticulation system which connects the houses to



In the  
Federal Court

—  
No.11

Judgment

21st February  
1976

(continued)

the waterworks provided by the local authority and that as regards the Gombak lands which required the construction of a pump house and an elevated tank the society must also pay for such construction.

As regards electricity supply, the developer had to build a power substation, and it submitted that the society must under the agreements pay for that also.

The learned trial judge disallowed the developer's counterclaim as regards the cost of the pump house, elevated water tank and that of the power substation. There is no appeal against this part of his decision.

10

This appeal is only against that part of his decision whereby he allowed the developer's counterclaim that the society pay not only the cost of connecting the water main and electricity supply from the road to each house (as to which there is no dispute) but also the cost of laying water mains and of laying electricity wires along the roads leading to the various houses, as shown on the plans at pages 56 and 57 of the appeal record, which cost we are told from the bar comes to about \$100,000.

20

The issue may thus be stated as follows: should the society pay for connecting the water and electricity supply to these houses, up to the lot boundaries only (as contended by the society) or should it pay also for laying water mains and electricity wires along the roads leading to these houses (as contended and successfully by the developer)? In fairness it should be stated that Mr. Khoo for the developer stated from the bar without contradiction that it did not expect the society to pay for laying water mains and electricity wires for the entire housing estate in the two areas, but only for doing so along the roads serving the houses sold to the society.

30

It is common ground that in construing clause 8 regard should be had to the whole agreement and during the course of argument reference was made to other clauses which it is convenient to reproduce now. These other clauses read as follows:

40

"Clause 1.

In the  
Federal Court  
—  
No.11  
Judgment  
21st February  
1976  
(continued)

10 The Company will sell and the Purchaser will buy All those one hundred and seventeen lots outlined in brown and coloured red on the Layout Plan and thereon identified by numbers, which numbers are also set out in Column 1 of Schedule 'B' hereto, each lot to be of the area shown opposite it in Column 2 of the Schedule 'B' making a total area of 206,166 square feet TOGETHER with the said houses to be built thereon (which said Lots and the said houses are hereinafter together referred to as 'the said Property') free from incumbrances at a price of Dollars one million five hundred and sixty-four thousand five hundred and fifty (₹1,564,550/-) (hereinafter called 'the total Purchase Price') being the total of the purchase prices of each of the said Lots as shown in Column 7 of Schedule 'B'."

"Clause 2

20 (a) Subject to the provisions of paragraph (b) the total Purchase Price for the said Property shall be paid by the Purchaser to the Company by instalments in the manner following, that is to say -

30 (i) Upon the execution of this Agreement the sum of ₹176,800/- being the total of the deposit amount for each of the said Lots as specified in Column 3 of Schedule 'B' hereto (the receipt of which the Company hereby acknowledges).

(ii) Upon commencement of building construction of the said houses or any of them, a sum equal to the total sum payable as specified in Column 4 of Schedule 'B' hereto in respect of each of such houses upon which building construction has begun.

40 (iii) Upon construction of the said houses or any of them reaching roof level a sum equal to the total sum payable as specified in Column 5 of Schedule 'B' hereto in respect of each of such houses reaching the aforesaid stage of construction.

In the  
Federal Court  
          
No.11  
Judgment  
21st February  
1976  
(continued)

(iv) Upon completion of building construction the said houses or any of them, a sum equal to the total sum payable as specified in Column 6 of Schedule 'B' hereto in respect of each such house so completed. (This at page 72 of the appeal record mentions the 'total purchase price' of each house)."

"Clause 4

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..... The said Lots have been staked out in accordance with the Layout Plan and have been open to the inspection of the Purchaser and if the position, measurements, boundaries and area of the said Lots as shown on the Layout Plan shall be different from its measurements, boundaries and area as stated or shown on the new document of title to the said Lots when issued, no such discrepancy or inaccuracy shall annul the sale or be the subject of any claim for damages or compensation or adjustment of the total Purchase Price on either side."

20

"Clause 5

The Company undertakes that the said Lots are sold and that all other lots shown on the Layout Plan are also sold TOGETHER with the free right and liberty for the Purchaser its successors and assigns and its and their servants agents licensees and invitees in common with the Company and all persons having the like right and liberty with or without vehicles at all times and for all purposes whatsoever connected with the use and enjoyment of the said Lots or other lots shown on the Layout Plan to pass and repass along over and upon all roads shown on the Layout Plan TOGETHER also with the full right and liberty to make all necessary connections and thereafter to use in a proper manner the drains sewers pipes cables or wires laid or constructed by the Company under or over the said roads for the purpose of the supply of water electricity and telephone services to and for drainage of water and sewage from the said Lots RESERVING NEVERTHELESS to the Company and all others to whom

30

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the Company may grant or have already granted the same or similar rights of way and drainage and of making connections as aforesaid the right to construct lay and use any drains sewers pipes and cables or wires over or under the said roads of the said Lots which the Company or such others may consider necessary for the purpose of serving other buildings erected or to be erected on other lots shown on the Layout Plan and to make all necessary connections thereto."

In the  
Federal Court  
—  
No.11  
Judgment  
21st February  
1976  
(continued)

"Clause 9

The Company shall at its own cost and expense construct and make up approach roads and drains in accordance with the requirements of the local authority and shall do everything possible to have the same taken over and adopted by the local authority but until they are so taken over and adopted the Purchaser shall from time to time contribute a fair and rateable proportion of the cost and expense of their maintenance and repair such apportionment to be made by the Company's Surveyor and to be accepted as final and binding by the Purchaser."

"Clause 12

Possession of each of the said houses will be given to the Purchaser on completion of the building construction thereof and upon the Purchaser having duly paid to the Company all moneys equal to the full value of such houses and the Purchaser having duly complied with the terms and covenants on its part to be observed in this Agreement."

It is argued on behalf of the society that it was not just buying land but that it was buying developed land and at prices comparable to and in some cases more than those usually paid for developed land in Kuala Lumpur; that when you buy developed land it is the developer's responsibility to pay for what is known as infrastructure, i.e. for roads, culverts, water mains, etc.; that the clauses fixing the price of these lands and the houses to be built on each individual lot and the method of paying for them show the total price to be paid for each house and that the society is liable to pay only this total price as well as the cost of laying

In the  
Federal Court  
—  
No.11  
Judgment  
21st February  
1976  
(continued)

water pipes and electric wires connecting each house to the mains on the road immediately outside the boundary of each individual lot. In particular the society draws attention to clause 1 which speaks of the "total of the purchase prices" of the property, clause 2(iv) of the "total purchase price" of each individual house, clause 4 of "the total purchase price" and clause 12 which says that possession of each house was to be given to the society on the society having paid to the developer "all moneys equal to the full value of such houses".

10

It is argued on behalf of the society that when the factual background and the main purpose of these agreements are looked at it is quite clear that the intention of the parties is that the developer was to pay for these disputed items.

It is argued on behalf of the society that clause 8 comes into play only if the developer applies on behalf of the society for water and electricity to be connected to the houses, whereupon the society is bound to reimburse the developer the cost incurred vis-a-vis the local authority, that if the developer does not so apply there is nothing for the society to reimburse; and that in either event the cost of laying water mains and erecting electricity wires along the road is the responsibility of the developer, not the society.

20

With all due respect I do not agree. I am of the opinion that the learned trial judge was right in holding that it is the society's responsibility to pay for these disputed items. It is acknowledged that when a person buys a house on a housing estate it is for the developer to pay for them, but here we have in clause 8 the words "inclusive of the cost of laying water mains and of electric supply and metering thereof", which I have underlined in the clause reproduced above. The words "water mains" do not mean the same thing as water pipes. The word "main" means according to the Shorter Oxford Dictionary "a principal channel, duct or conductor for conveying water, sewage, gas or electricity, e.g. along the street of a town", so that the use of the words "water mains" in clause 8 must in my opinion mean that the society accepted responsibility for paying the cost of laying the main water pipes along the streets which these houses front. The use of the

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words "and of electricity supply and the metering thereof" immediately after the words "water mains" must in my opinion mean that under the agreement the society is also responsible for paying the cost of laying electric wires along the roads leading to these houses.

In the  
Federal Court

No.11

Judgment

21st February  
1976

(continued)

10 Giving clause 8 this construction does not in my opinion do violence to its language, for the transaction between the society and developer is an unusual one. The society is not like an ordinary purchaser who buys a single house; on the contrary it bought in bulk and in the circumstances it is not altogether unexpected that the agreement is so worded as to make the cost of these disputed items the society's responsibility rather than the developer's.

I would therefore dismiss this appeal with costs.

20 Delivered in  
Kuala Lumpur on  
21st February, 1976.

M. Suffian  
(Tun Mohamed Suffian)  
LORD PRESIDENT, MALAYSIA.

#### Notes

1. Arguments in Kuala Lumpur on 14th January, 1976.

2. Counsel:

For appellant - Raja Abdul Aziz of Messrs.  
Rithauddeen & Aziz, Kuala Lumpur;  
For respondent - Mr. Ronald T.S.Khoo of Messrs.  
Shearn, Delamore & Co., Kuala Lumpur.

3. Authorities cited:

- 30 (1) Prenn v. Simmonds (1971) 3 A.E.R.237 H.L.241.  
(2) Commissioner (1966) 2 A.E.R. 299.  
(3) East Ham Borough Council(1965)1 A.E.R.210,219)  
(4) Lord Davey (1900) A.C.260, 267. G3 to H4. )  
(5) Glynn (1893) A.C. 351, 357.  
(6) Suisse (1966) 2 WLR 944, 986 B3.  
(7) Sze Hai Tong Bank (1959) A.C. 576, 587.  
(8) River Wear Commissioner (1876-7)A.C.743, 763.  
(9) Butterfly Co. Ltd. (1910) A.C. 377, 382.  
(10) Stroud's Judicial Dictionary on "include",  
vol. 3, 4th edition, p.1333-4.  
40 (11) 76 LQR 521.  
(12) Hillas (1932) vol. 147 LTR p.503  
(13) Foley (1934) 2 K.B. 1.  
(14) Chitty on Contract, 23rd edition, p.44,  
para. 84.

4. Lee Hun Hoe, C.J. Borneo, and Wan Suleiman, F.J.,  
concur.

44.

In the  
Federal Court

No. 12

          
No.12

Order

Order

21st February  
1976

CORAM: SUFFIAN, LORD PRESIDENT, FEDERAL COURT,  
MALAYSIA;  
LEE HUN HOE, CHIEF JUSTICE, HIGH COURT IN  
BORNEO;  
WAN SULEIMAN, JUDGE, FEDERAL COURT,  
MALAYSIA.

IN OPEN COURT

THIS 21ST DAY OF FEBRUARY, 1976 10

O R D E R

THIS APPEAL coming on for hearing on the 14th day of January, 1976 in the presence of Raja Aziz Addruse of Counsel for the Appellant and Encik Ronald T.S. Khoo of Counsel for the Respondent AND UPON READING the Record of Appeal filed herein AND UPON HEARING the submissions of Counsel as aforesaid IT WAS ORDERED that this Appeal do stand adjourned for judgment and the same coming on for judgment this day in the presence of Counsel as aforesaid IT IS ORDERED that this Appeal be and is hereby dismissed AND IT IS ORDERED that the Appellant do pay to the Respondent the costs of this Appeal to be taxed by the proper officer of the Court AND IT IS LASTLY ORDERED that the sum of \$500 (Ringgit Five Hundred only) paid into Court by the Appellant as security for costs of this Appeal be paid out to the Respondent towards taxed costs. 20

GIVEN under my hand and the seal of the Court this 21st day of February, 1976. 30

CHIEF REGISTRAR,  
FEDERAL COURT,  
MALAYSIA.

45.

No. 13

Order granting final leave to appeal to  
His Majesty the Yang di-Pertuan Agong

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA  
LUMPUR (APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 148 OF 1975

BETWEEN

Malaysian Armed Forces Co-operative  
Housing Society Ltd. ... Appellant

AND

Nanyang Development (1966) Sdn. Bhd. ... Respondent

(In the matter of Kuala Lumpur High  
Court Civil Suit No. 807 of 1971

BETWEEN

Malaysian Armed Forces Co-operative  
Housing Society Ltd. ... Plaintiff

AND

Nanyang Development (1966)  
Sdn. Bhd. ... Defendant)

20 CORAM: ALI, ACTING CHIEF JUSTICE, HIGH COURT IN  
MALAYA;

ONG, JUDGE, FEDERAL COURT, MALAYSIA;

RAJA AZLAN SHAH, JUDGE, FEDERAL COURT,  
MALAYSIA.

IN OPEN COURT

THIS 10TH DAY OF  
JANUARY, 1977

O R D E R

30 UPON MOTION preferred unto Court this day by  
Raja Aziz Addruse of Counsel for the Appellant in  
the presence of Encik Cecil Abraham of Counsel for  
the Respondent AND UPON READING the Notice of Motion

In the  
Federal Court

—  
No.13

Order  
granting  
final leave  
to appeal to  
His Majesty  
the Yang di-  
Pertuan Agong

10th January  
1977



In the  
Federal Court

—  
No.13

Order  
granting  
final leave  
to appeal to  
His Majesty  
the Yang di-  
Pertuan Agong

10th January  
1977  
(continued)

dated the 15th day of December, 1976, and the Affidavit of Mejar Haji Abdullah Munir affirmed on the 15th day of November, 1976, and filed in support of the said Motion AND UPON HEARING Counsel as aforesaid IT IS ORDERED that final leave be and is hereby granted to the Appellant to appeal to His Majesty the Yang di-Pertuan Agong against the Order of the Federal Court of Malaysia given on the 21st day of February, 1976 AND IT IS ORDERED that the costs of this Motion be costs in the cause.

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GIVEN under my hand and the Seal of the Court this 10th day of January, 1977.

Sgd. (Illegible)

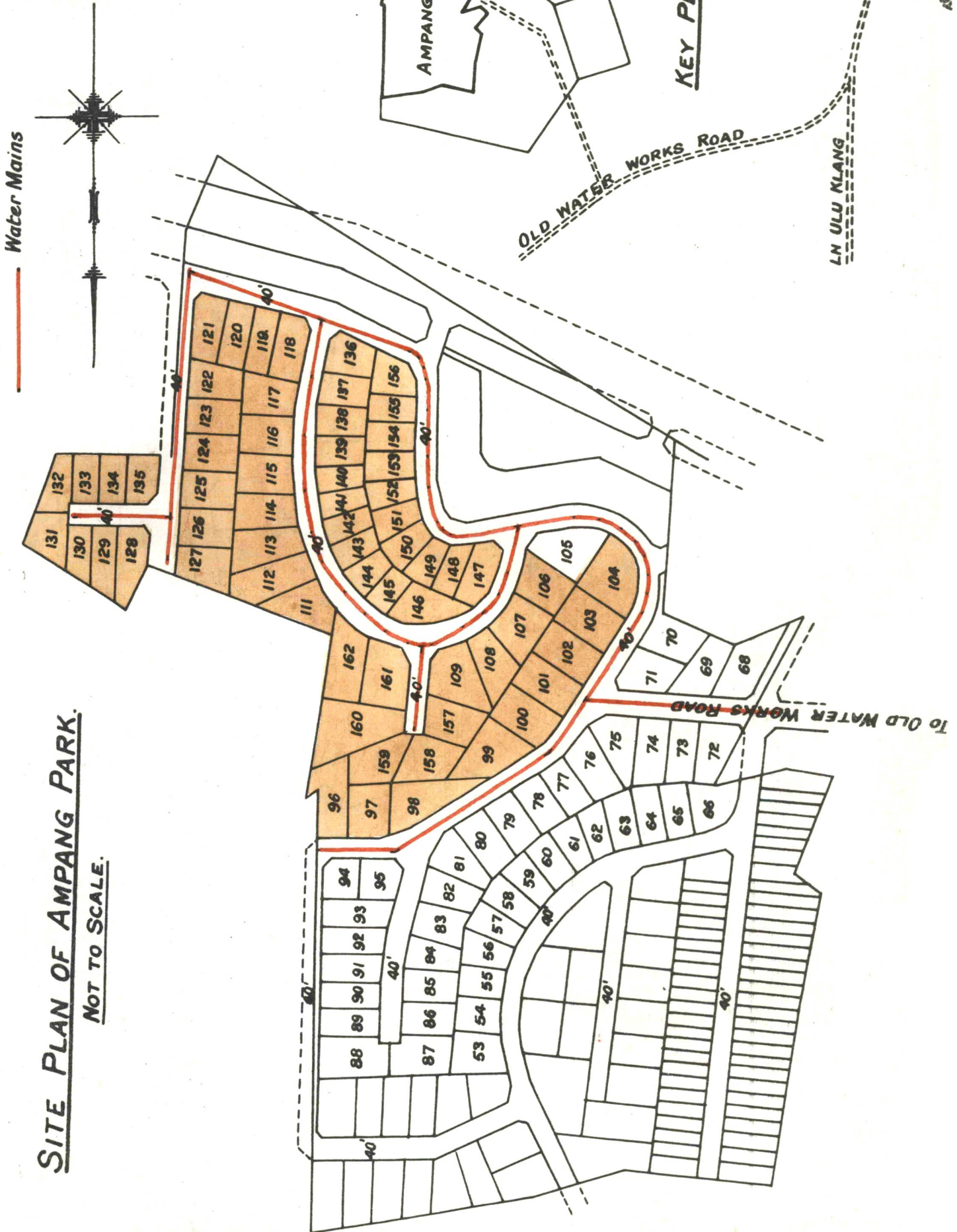
.....  
ACTING CHIEF REGISTRAR,  
FEDERAL COURT, MALAYSIA.

This Order is filed by Messrs. Rithauddeen & Aziz, Solicitors for the Appellant, whose address for service is Tingkat, 3, Wisma Batik, Jalan Tun Perak, Kuala Lumpur.

20

**EXHIBITS**  
**PLAINTIFFS EXHIBITS**  
**P2**  
**LAYOUT PLAN OF**  
**AMPANG HOUSING SCHEME.**

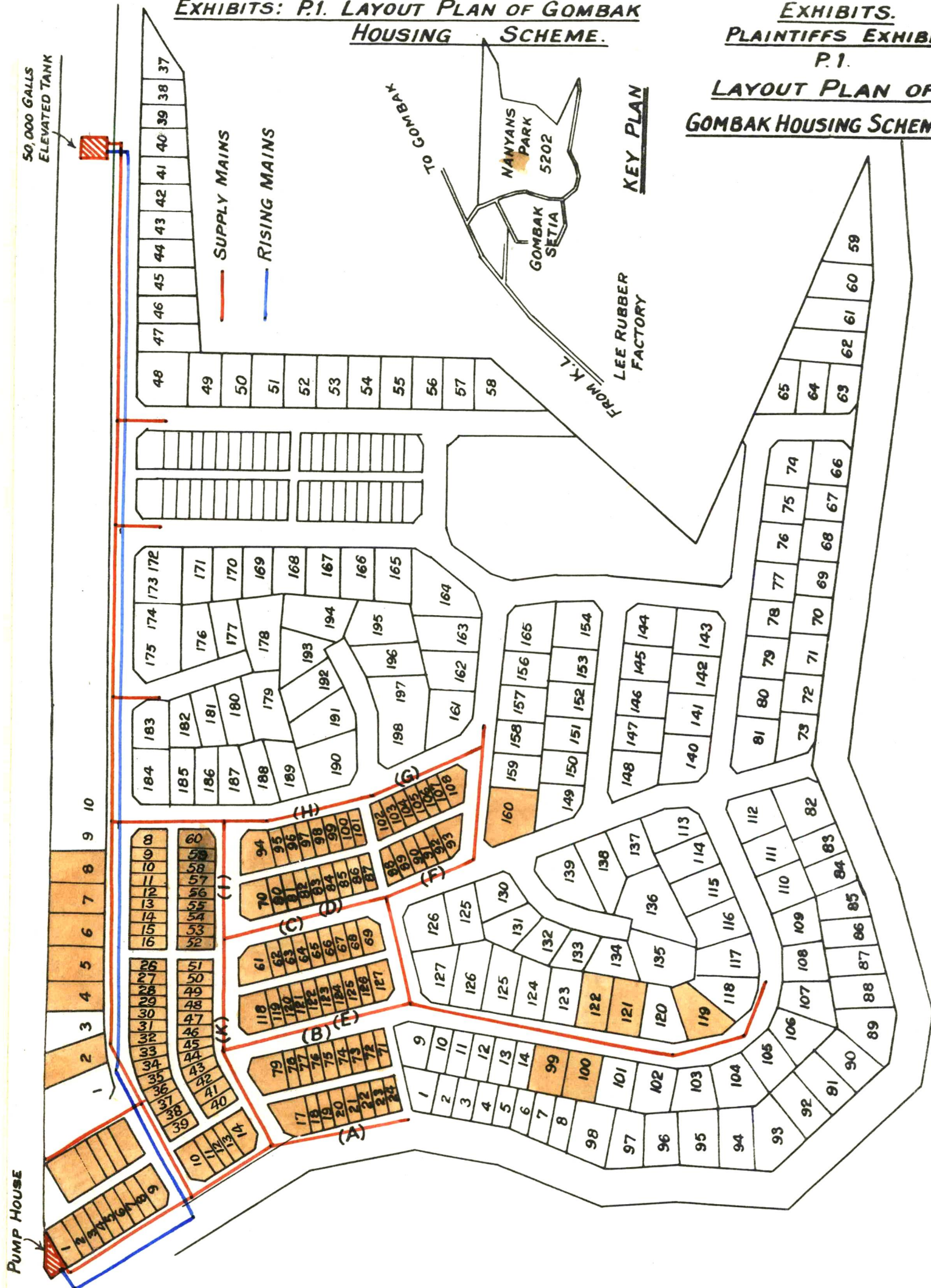
**P2. LAYOUT PLAN OF AMPANG HOUSING SCHEME.**



**SITE PLAN OF AMPANG PARK.**  
**NOT TO SCALE.**

EXHIBITS: P.1. LAYOUT PLAN OF GOMBAK HOUSING SCHEME.

EXHIBITS.  
PLAINTIFFS EXHIBITS  
P.1.  
LAYOUT PLAN OF  
GOMBAK HOUSING SCHEME.



P.3 - Agreement between Plaintiffs and  
Gombak Gardens Ltd.

Exhibits

Plaintiffs'  
Exhibits

P.3

Agreement  
between  
Plaintiffs  
and Gombak  
Gardens Ltd.

15th March  
1966

10 AN AGREEMENT made this 15th day of March, 1966  
Between GOMBAK GARDENS LIMITED, a Company incorpor-  
ated in the States of Malaya and having its  
registered office at Nos. 23-25 Jalan Silang,  
Kuala Lumpur (hereinafter called 'the Company'  
which expression wherever the context so permits  
shall include its successors in title and assigns)  
of the one part And THE MALAYSIAN ARMED FORCES CO-  
OPERATIVE HOUSING SOCIETY LIMITED, a Society  
registered under the Co-operative Societies  
Ordinance (NO. 33 of 1948) and having its regis-  
tered office at the Ministry of Defence, Jalan  
Padang Tembak, Kuala Lumpur (hereinafter called  
'the Purchaser' which expression wherever the  
context so permits shall include its successors in  
title and lawful assigns) of the other part.

20 WHEREAS the Company is the registered propri-  
etor and intends to develop as a housing estate  
the land at present comprised in Selangor  
Certificate of Title No. 21308 for Lot No. 5202  
in the Mukim of Setapak in the District of Kuala  
Lumpur in area 49 acres 2 roods 00 poles (herein-  
after called 'the Said Land').

AND WHEREAS the Said Land is now in the  
course of survey and subdivision for the purpose  
inter alia of obtaining separate titles to the  
sub-divided lots.

30 AND WHEREAS a plan of the proposed sub-  
division has now been prepared showing the layout  
of the sub-divided lots (a copy whereof is annexed  
hereto as Schedule 'A' and which is hereinafter  
called 'the Layout Plan').

40 AND WHEREAS the Company agrees to sell and the  
Purchaser agrees to buy a total of 117 of the sub-  
divided lots (hereinafter referred to as 'the said  
Lots') which for the purposes of identification  
are outlined in brown and coloured red on the  
Layout Plan estimated to contain a total area of  
206,166 square feet or thereabouts (hereinafter  
called "the area sold") together with a dwelling  
house to be erected on each of the said Lots  
(hereinafter referred to as 'the said house' or  
'the said houses' as the case may be) for the price

Exhibits

and subject to the terms and conditions hereinafter appearing.

Plaintiffs' Exhibits

NOW IT IS HEREBY AGREED as follows:-

P.3  
 Agreement between Plaintiffs and Gombak Estates Ltd.  
 15th March 1966  
 (continued)

1. The Company will sell and the Purchaser will buy All those one hundred and seventeen lots outlined in brown and coloured red on the Layout Plan and thereon identified by numbers, which numbers are also set out in Column 1 of Schedule 'B' hereto, each lot to be of the area shown opposite it in Column 2 of Schedule 'B' making a total area of 206,166 square feet TOGETHER with the said houses to be built thereon (which said Lots and the said houses are hereinafter together referred to as 'the said Property') free from incumbrances at a price of Dollars One million five hundred and sixty-four thousand five hundred and fifty (S\$1,564,550/0) (hereinafter called 'the total Purchase Price') being the total of the purchase prices of each of the said Lots as shown in Column 7 of Schedule 'B'. 10
  
2. (a) Subject to the provisions of paragraph (b) the total Purchase Price for the said Property shall be paid by the Purchaser to the Company by instalments in the manner following, that is to say:- 20
  - (i) Upon the execution of this Agreement the sum of S\$176,800/- being the total of the deposit amount for each of the said Lots as specified in Column 3 of Schedule 'B' hereto (the receipt of which the Company hereby acknowledges). 30
  
  - (ii) Upon commencement of building construction of the said houses or any of them, a sum equal to the total sum payable as specified in Column 4 of Schedule 'B' hereto in respect of each of such houses upon which building construction has begun.
  
  - (iii) Upon construction of the said houses or any of them reaching roof level a sum equal to the total sum payable as specified in Column 5 of Schedule 'B' hereto in respect of each of such houses reaching the aforesaid stage of construction. 40

(iv) Upon completion of building construction the said houses or any of them, a sum equal to the total sum payable as specified in Column 6 of Schedule 'B' hereto in respect of each such house so completed.

Exhibits  
 —  
 Plaintiffs'  
 Exhibits  
 P.3

(b) Payment of instalments (ii), (iii) and (iv) aforementioned shall be made by the Purchaser within two weeks of the receipt of a notice from the Company intimating that the stage for payment of any of the said instalments has been reached. Before making any such payment, the Purchaser shall be entitled to inspect the house or houses in respect of which payment is to be made in order to satisfy itself that the Company has embarked on or satisfactorily completed the relevant stage of construction, as the case may be, and in the event of any further construction being found necessary may require the Company to complete the same before making payment.

Agreement  
 between  
 Plaintiffs  
 and Gombak  
 Estates Ltd.  
 15th March  
 1966  
 (continued)

3. Upon the execution of this Agreement the Company shall at its own cost and expense proceed to apply for the subdivision of the Said Land and the issue of a separate document of title to the said Lots.

4. It is expressly agreed and declared that the position of the said Lots in relation to each other and the other Lots in the housing estate as shown on the Layout Plan and the measurements, boundaries and area of the said Lots as given therein are believed but are not guaranteed to be correct. The said Lots have been staked out in accordance with the Layout Plan and have been open to the inspection of the Purchaser and if the position, measurements, boundaries and area of the said Lots as shown on the Layout Plan shall be different from its measurements, boundaries and areas as stated or shown on the new document of title to the said Lots when issued no such discrepancy or inaccuracy shall annul the sale or be the subject of any claim for damages or compensation or adjustment of the total Purchase Price on either side.

5. The Company undertakes that the said Lots are sold and that all other lots shown on the Layout Plan are also sold TOGETHER with the free right and liberty for the Purchaser its successors and assigns and its and their servants agents licensees

Exhibits

—  
 Plaintiffs'  
 Exhibits

P.3

Agreement  
 between  
 Plaintiffs  
 and Gombak  
 Estates Ltd.

15th March  
 1966  
 (continued)

and invitees in common with the Company and all persons having the like right and liberty with or without vehicles at all times and for all purposes whatsoever connected with the use and enjoyment of the said Lots or other lots shown on the Layout Plan to pass and repass along over and upon all roads shown on the Layout Plan TOGETHER also with the full right and liberty to make all necessary connections and thereafter to use in a proper manner the drains sewers pipes cables or wires laid or constructed by the Company under or over the said roads for the purpose of the supply of water electricity and telephone services to and for drainage of water and sewage from the said Lots RESERVING NEVERTHELESS to the Company and all others to whom the Company may grant or have already granted the same or similar rights of way and drainage and of making connections as aforesaid the right to construct lay and use any drains sewers pipes and cables or wires over or under the said roads of the said Lots which the Company or such others may consider necessary for the purpose of serving other buildings erected or to be erected on other lots shown on the Layout Plan and to make all necessary connections thereto.

10

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6. The said houses shall be of the type and design in accordance with the plans and specifications which have been shown to and inspected by the Purchaser and which for purposes of identification have been signed by the Purchaser and the Company and attached hereto as Schedule 'C'. The said houses shall be constructed in a good and workman-like manner and in compliance with generally recognised building standards and practice. The Company however reserves the right from time to time to make modifications to the plans, specifications and details of the said houses if the local or other authority having authority in that behalf shall so direct or require or if the Company's architect shall in the circumstances of the case consider it necessary or expedient and in such case with the written consent of the Purchaser, without however incurring any extra cost or liability of any kind whatsoever to the Purchaser in respect thereof and without the Purchaser being entitled to any reduction of the Purchase Price or any damages in respect thereof PROVIDED ALWAYS that any alteration or substituted materials involved shall be of the same quality and standard of workmanship as those set out in the aforesaid plans

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specifications and details. Conversely, if the Purchaser shall require works of a minor nature to be done, the Company shall carry out the same in a substantial and workmanlike manner, whereupon the Purchaser shall reimburse the Company for any extra cost thereby incurred.

10 7. The Company shall conform to the provisions of any Enactment or Ordinance and to any regulations or bye-laws for the time being in force affecting the said houses and will give all necessary notices to and obtain the requisite sanction of the local or other authority in respect of the construction of the said houses and generally will comply with the building and other regulations of such authority and will keep the Purchaser indemnified against all fines penalties and loss incurred by reason of any breach of any Act Enactment Ordinance bye-law or regulation.

20 8. The Company further undertakes to apply on behalf of the Purchaser for the connection to the said houses of such water and electrical services as are provided by the local authority but all costs of the making of such connections inclusive of the cost of laying water mains and of electric supply and metering thereof shall be borne and paid by the Purchaser.

30 9. The Company shall at its own cost and expense construct and make up approach roads and drains in accordance with the requirements of the local authority and shall do everything possible to have the same taken over and adopted by the local authority but until they are so taken over and adopted the Purchaser shall from time to time contribute a fair and rateable proportion of the cost and expense of their maintenance and repair such apportionment to be made by the Company's surveyor and to be accepted as final and binding by the Purchaser.

40 10. The Purchaser shall pay to the Company for all outgoing including quit rent rates and assessment in respect of the said Lots as from the date of completion of building construction in respect of each and all of the said houses a proportion of the outgoing quit rent rates and assessments payable in respect of the said Lots. The amount payable in respect of the said Lots shall be such proportion of the total outgoing paid by the Company in respect of the Said Land as the

Exhibits  
 —  
 Plaintiffs'  
 Exhibits  
 P.3  
 Agreement  
 between  
 Plaintiffs  
 and Gombak  
 Estates Ltd.  
 15th March  
 1966  
 (continued)



Exhibits

—  
 Plaintiffs'  
 Exhibits

P.3

Agreement  
 between  
 Plaintiffs  
 and Gombak  
 Estates Ltd.

15th March  
 1966  
 (continued)

area of the said lots bear to the total area of the Said Land excluding the area reserved for roads open spaces as shown on the Layout Plan and the Purchaser shall continue to pay to the Company the aforesaid share of the outgoings quit rent rates and assessments in respect of the said Lots until separate documents of title to the said Lots are issued and the said Lots are transferred to the Purchaser as hereinafter provided, whereupon it shall then continue to pay such sum directly to the appropriate authorities concerned.

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11. (a) The Company shall complete building construction of the said 117 houses within the periods specified below, time being of the essence of the contract:-

(i) within 10 months from the date hereof not less than 40 of the said houses.

(ii) within 14 months from the date hereof not less than a further 40 of the said houses.

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(iii) within 18 months from the date hereof the balance of the said 117 houses.

PROVIDED ALWAYS that the Company shall not be liable for any delay occasioned by war, strikes, lockout, civil commotion, force majeure, inclement weather of abnormal duration, loss or damage by fire, flood or tempest, or other like cause outside the Company's control.

(b) In the event that the Company shall fail to complete the said houses within the periods stipulated in sub-clause (a) above except for the reasons stated in the proviso therein, the Company shall pay to the Purchaser by way of liquidated damages the sum of \$50/- for each and every month of delay in the completion of each house.

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12. Possession of each of the said houses will be given to the Purchaser on completion of the building construction thereof and upon the Purchaser having duly paid to the Company all moneys equal to the full value of such houses and the Purchaser having duly complied with the terms and covenants on its part to be observed in this Agreement.

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13. It is expressly agreed and declared by the parties hereto that the Purchaser shall not be entitled to call for a transfer of the said Lots before the issue of a separate document of title to all of the said Lots although the Purchaser may or shall have paid all whatsoever sums of money due and owing by it to the Company under the terms of this Agreement but shall continue to hold as licensee from the Company pursuant to the terms of this Agreement. Upon the issue of all the documents of title to the said Lots PROVIDED the Purchaser shall have paid to the Company all moneys payable under this Agreement AND PROVIDED FURTHER that the Purchaser shall have performed and observed the provisions of this Agreement the Company shall execute valid and registrable transfers of the said Lots to the Purchaser or the Purchaser's nominee.

Exhibits

—  
 Plaintiffs'  
 Exhibits  
 P.3

Agreement  
 between  
 Plaintiffs  
 and Gombak  
 Estates Ltd.

15th March  
 1966  
 (continued)

14. If the Purchaser shall -

- (a) fail to pay any of the instalments of the total Purchase Price in accordance with the provisions of Clause 2(b) above; or
- (b) commit any breach of the terms and conditions contained in this Agreement; or
- (c) before payment in full of the total Purchase Price enter into any composition or arrangement with its creditors or enter into liquidation whether compulsory or voluntary; or
- (d) if any execution be levied upon the Purchaser or its goods,

then and in any of the said cases, it shall be lawful for the Company at any time thereafter to terminate the Purchaser's licence to occupy the said Lots and the said houses and to annul the sale of the said Lots and to forthwith determine this Agreement.

15. Upon such determination as aforesaid pursuant to Clause 14 herein the Purchaser and all those claiming title under it shall within three months from the date of receipt of notice to do so vacate the said Lots and the Company shall be entitled to resell the said Lots either by public auction or private contract subject to such stipulations and

Exhibits

—  
 Plaintiffs'  
 Exhibits

P.3

Agreement  
 between  
 Plaintiffs  
 and Gombak  
 Estates Ltd.

15th March  
 1966  
 (continued)

generally in such manner as they may think fit. Such resale shall be made for the purpose of recovering for the Company any sums payable by the Purchaser to the Company pursuant to this Agreement and the Company shall also be entitled to retain out of the proceeds of such resale all legal expenses incurred in evicting the Purchaser and all those claiming title under it and all other necessary expenses attending such a resale or attempted resale. Subject to the Company's right to retain any sums payable to it by the Purchaser referred to above in this clause the Company shall refund to the Purchaser out of the proceeds of such resale the amount of any payments made by the Purchaser to the Company pursuant to this Agreement. Any deficiency in price which may result on and all legal and other expenses incurred in evicting the Purchaser and all those claiming title under it and all other necessary expenses attending such a resale or attempted resale shall be made good by the Purchaser and shall be a debt due from the Purchaser to the Company and shall be paid forthwith on demand. Upon termination of this Agreement pursuant to Clause 14, neither the Purchaser, its assigns and all those claiming title under it shall have any other claims against the Company in respect of this Agreement other than and except those conferred upon it by the provisions of this clause. 10 20

16. (a) Notwithstanding the provisions for determination of this Agreement under Clause 14 hereof, in the event that the Purchaser shall fail to pay any of the instalments of the total Purchase Price on due date, the Company may at its option, instead of exercising its right to determine this Agreement, require the Purchaser to pay interest on all moneys due at the rate of 8.4% per annum until payment. 30

(b) If upon completion of each of the said houses, the Purchaser shall have failed to pay the full total Purchase Price, the Company may at its option, instead of exercising its right to determine this Agreement, require the Purchaser to enter into an agreement to pay interest on all moneys then due on such lot or lots at the rate of 8.4% per annum and to pay all such moneys by instalments in such amounts and on such terms and conditions as may be mutually agreed upon by the parties and set out in separate agreements prepared 40

by the Company's Solicitors in respect of each such lot upon which moneys are due to the Company.

17. In the event of the Company failing to obtain a sub-division of the Said Land and being unable to provide separate documents of title, the Purchaser shall have the right to have refunded forthwith to it all moneys that may have been paid to the Company together with interest at the rate of 5% per annum until refund and upon such refund, neither party shall have any further claim against the other under this Agreement.

18. Any defects shrinkage or other faults in the said Lots which shall become apparent within the period of six (6) months after the date of completion of building construction in respect thereof and which are due to defective workmanship or materials not in accordance with this Agreement shall within a reasonable time after receipt of notice of such defects or faults from the Purchaser be made good by the Company at its own cost. In the event of any dispute arising the decision of an Architect to be appointed by the parties (the cost thereof to be borne by the parties equally) shall be binding upon the parties hereto as to whether such defects or faults fall within the scope of this clause and whether the Company is bound to make good the same to the Purchaser.

19. (a) As soon as the Vendor shall have brought on to the Said Land, building materials and equipment for the construction of the said houses, it shall insure the same against loss or damage by fire and upon any of the said houses reaching a height of 10 feet above the ground level it shall also insure the same against loss or damage by fire and shall continue to keep the same so insured until completion thereof when sub-clause (b) shall apply.

(b) Upon completion of each of the said houses and until one year from the date of payment by the Purchaser of all moneys whatsoever owing to the Company in respect of each house, the same shall be insured by the Company against loss or damage by fire and the Purchaser shall pay the premium therefore.

20. The Purchaser by its representatives shall at all reasonable times have access to the site,

Exhibits

Plaintiffs' Exhibits

P.3

Agreement between Plaintiffs and Gombak Estates Ltd.

15th March 1966

(continued)

Exhibits  
-----  
Plaintiffs'  
Exhibits  
P.3  
Agreement  
between  
Plaintiffs  
and Gombak  
Estates Ltd.  
15th March  
1966  
(continued)

premises and workshops or other places where materials are being prepared and stored for the construction of the said houses.

21. The Purchaser shall have the liberty to appoint a Clerk of Works whose duty shall be to act solely as inspector on behalf of the Purchaser and the Company shall afford him every facility for the due performance of his duties.

22. The Schedules 'A', 'B' and 'C' hereto shall be taken read and construed as an integral part of this Agreement. 10

23. The Company's and Purchaser's costs in respect of this Agreement, the Agreement referred to in Clause 16 hereof and the transfers of the said Lots under Clause 13 herein including stamp duty (if payable) thereon shall be borne by the Purchaser.

24. Any notice required to be given under this Agreement shall be in writing and shall be sufficiently served on the Company by registered letter addressed to it at its address stated herein and shall be sufficiently served on the Purchaser by registered letter addressed to it at the address stated herein and shall be deemed to have been received by the addressee in the ordinary course of post. 20

IN WITNESS WHEREOF the Company and the Purchaser have caused their respective common seals to be hereunto affixed the day and year first above written.

The Common seal of GOMBAK )  
GARDENS LIMITED was here- )  
unto affixed in the )  
presence of:- ) 30

Sd. Illegible Director

Sd. Illegible Secretary

59.

The Common Seal of THE  
MALAYSIAN ARMED FORCES CO-  
OPERATIVE HOUSING SOCIETY  
LIMITED was hereunto  
affixed in the presence  
of:-

Sd. Illegible

Sd. Illegible  
Chairman,  
Malaysian Armed Forces  
Co-operative Housing  
Society Limited

Sd. Illegible  
Malaysian Armed Forces  
Co-operative Housing  
Society Ltd.

Exhibits  
-----  
Plaintiffs'  
Exhibits  
P.3  
Agreement  
between  
Plaintiffs  
and Gombak  
Estates Ltd.  
15th March  
1966  
(continued)

SCHEDULE 'A'

PLAN OF PROPOSED SUBDIVISION AND LAYOUT

SCHEDULE 'B'

Description of lot areas and stages of  
construction for the payment of progress payments,  
and total purchase price of each lot.

SCHEDULE 'C'

PLANS AND SPECIFICATIONS

Exhibits

Plaintiffs' Exhibits

ANNEXE 'B'

1. Lot No. as shown on Layout Plan	2. Approx. Area (Sq.ft.)	3. Amount payable on execution of Agreement of building construction	4. Instalment payable on commencement of building construction	5. Instalment payable on construction reaching roof	6. Instalment payable on completion of building construction	7. Total Purchase Price
1	1,540	1,650	5,500	3,500	3,000	13,650
2	1,540	1,400	5,250	3,500	3,000	13,150
3	1,540	1,400	5,250	3,500	3,000	13,150
4	1,540	1,400	5,250	3,500	3,000	13,150
5	1,540	1,400	5,250	3,500	3,000	13,150
6	1,540	1,400	5,250	3,500	3,000	13,150
7	2,828	2,150	6,000	3,500	3,000	14,650
8	2,828	2,150	6,000	3,500	3,000	14,650
9	1,540	1,400	5,250	3,500	3,000	13,150
10	1,540	1,400	5,250	3,500	3,000	13,150
11	1,540	1,400	5,250	3,500	3,000	13,150
12	1,540	1,400	5,250	3,500	3,000	13,150
13	1,540	1,400	5,250	3,500	3,000	13,150
14	1,540	1,400	5,250	3,500	3,000	13,150
15	1,540	1,400	5,250	3,500	3,000	13,150
16	1,540	1,650	5,500	3,500	3,000	13,650
17	3,448	2,150	6,000	3,500	3,000	14,650
18	1,540	1,400	5,250	3,500	3,000	13,150
19	1,540	1,400	5,250	3,500	3,000	13,150

P.4

## Agreement between Plaintiffs and Defendants

Exhibits

Plaintiffs' Exhibits

P.4

Agreement between Plaintiffs and Defendants

23rd August 1966

10 AN AGREEMENT made this 23rd day of August 1966 Between NANYANG DEVELOPMENT (1966) SENDIRIAN BERHAD, a company incorporated in the States of Malaya and having its registered office at No.75, Jalan Bandar, Kwong Yik Bank Building, Room 405, 4th Floor, Kuala Lumpur (hereinafter called "the Company" which expression wherever the context so permits shall include its successors in title and lawful assigns) of the one part and THE MALAYSIAN ARMED FORCES CO-OPERATIVE HOUSING SOCIETY LIMITED, a Society registered under the Co-operative Societies Ordinance (No.33 of 1948) and having its registered office at the Ministry of Defence, Jalan Padang Tembak, Kuala Lumpur (hereinafter called "the Purchaser" which expression wherever the context so permits shall include its successors in title and lawful assigns) of the other part.

20 WHEREAS the Company is the registered proprietor of all those pieces of land held under:-

<u>Grant for Land</u>	<u>Lot No.</u>	<u>Mukim</u>	<u>District</u>	<u>Area</u>
3554	121	Ampang	K. Lumpur	10a. 2r. 10p.
5158	734	Ampang	K. Lumpur	2a. 0r. 38p.
<u>No.</u>				
2341	642	Ampang	K. Lumpur	3a. 1r. 24p.
2143	643	Ampang	K. Lumpur	1a. 0r. 21.6p.
2146	657	Ampang	K. Lumpur	2a. 2r. 17p.
2147	658	Ampang	K. Lumpur	2a. 0r. 19p.
2149	659	Ampang	K. Lumpur	4a. 1r. 24p.
2148	660	Ampang	K. Lumpur	0a. 2r. 36p.
2306	661	Ampang	K. Lumpur	0a. 2r. 33p.
2137	662	Ampang	K. Lumpur	1a. 0r. 14p.
2140	672	Ampang	K. Lumpur	1a. 3r. 23p.

30 (hereinafter collectively referred to as "the said Lands") and intends to develop the said Lands as a housing estate.

40 AND WHEREAS the said Lands are now in the course of survey and subdivision for the purpose inter alia of obtaining separate titles to the subdivided lots.



Exhibits

Plaintiffs'  
Exhibits

P.4

Agreement  
between  
Plaintiffs  
and  
Defendants  
23rd August  
1966  
(continued)

AND WHEREAS a plan of the proposed sub-division has now been prepared showing the layout of the subdivided lots (a copy whereof is annexed hereto as Schedule 'A' and which is hereinafter called "the Layout Plan").

AND WHEREAS the Company agrees to sell and the Purchaser agrees to buy a total of 108 of the subdivided lots (hereinafter referred to as "the said Lots") which for the purposes of identification are outlined in brown and coloured red on the Layout Plan estimated to contain a total area of 865,889 sq.ft. or thereabouts (hereinafter called "the area sold") together with a dwelling house to be erected on each of the said Lots (hereinafter referred to as "the said house" or "the said houses" as the case may be) for the sum of \$4,543,135/- and subject to the terms and conditions hereinafter appearing. 10

NOW IT IS HEREBY AGREED as follows:-

1. The Purchaser will initially buy 65 lots outlined in brown and coloured red on the Layout Plan and thereon identified by numbers, which numbers are also set out in Column 1 of Schedule 'B' hereto, each lot to be of the area shown opposite it in Columns 2 and 3 of Schedule 'B' making a total area of 444,989 sq.ft. TOGETHER with the specified types of houses to be built thereon (which said Lots and the said houses are hereinafter together referred to as "the said Property") free from encumbrances at a price of Dollars Two Million Seven Hundred and Eighty Three Thousand Two Hundred and Ten (\$2,783,210.00) (hereinafter called "the Purchase Price") being the total of the purchase prices of each of the said Lots as shown in Column 11 of Schedule 'B'. 20 30

2. (a) Subject to the provisions of paragraph (b) the total Purchase Price for the said Property shall be paid by the Purchaser to the Company by instalments in the manner following that is to say:-

(i) Upon the execution of this Agreement the sum of \$400,985/- being the total of the deposit amount for each of the said Lots as specified in Column 6 of Schedule 'B' hereto.

(ii) Upon commencement of building construction of the said houses or any of them a sum equal to the total sum payable as specified in Column 7 of Schedule 'B' hereto in respect of each of such houses upon which building construction has begun.

10 (iii) Upon construction of the said houses or any of them reaching first floor level a sum equal to the total sum payable as specified in Column 8 of Schedule 'B' hereto in respect of each of such houses reaching the aforesaid stage of construction.

20 (iv) Upon construction of the said houses or any of them reaching roof level a sum equal to the total sum payable as specified in Column 9 of Schedule 'B' hereto in respect of each of such houses reaching the aforesaid stage of construction.

(v) Upon completion of building construction of said houses or any of them a sum equal to the total sum payable as specified in Column 10 of Schedule 'B' hereto in respect of each such house as completed.

30 (b) Payment of instalments (ii), (iii), (iv) and (v) aforementioned shall be made by the Purchaser to the Company within two weeks of the receipt of a notice from the Company intimating that the stage for payment of any of the said instalments has been reached and time shall be the essence of this contract. Before making any such payment, the Purchaser shall be entitled to inspect the house or houses in respect of which payment is to be made in order to satisfy itself that the Company has embarked on or satisfactorily completed the relevant stage of construction, as the case may be and in the event of any further construction being found necessary may require the Company to complete the same before making payment.

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3. Upon the execution of this Agreement the Company shall at its own cost and expense proceed to apply for the subdivision of the said Lands and the issue of a separate document of title to the said Lots.

Exhibits  
 —  
 Plaintiffs'  
 Exhibits  
 P.4  
 Agreement  
 between  
 Plaintiffs  
 and  
 Defendants  
 23rd August  
 1966  
 (continued)

Exhibits

—  
Plaintiffs'  
Exhibits

P.4

Agreement  
between  
Plaintiffs  
and  
Defendants  
23rd August  
1966  
(continued)

4. It is expressly agreed and declared that the position of the said Lots in relation to each other and the other lots on the housing estate as shown on the Layout Plan and the measurements, boundaries and area of the said Lots as given therein are believed but are not guaranteed to be correct. The said Lots have been staked out in accordance with the Layout Plan and have been open to the inspection of the Purchaser and if the position, measurements, boundaries and area of the said Lots as shown on the Layout Plan shall be different from its measurements, boundaries and area as stated or shown on the new document of title to the said Lots when issued no such discrepancy or inaccuracy shall annul the sale or be the subject of any claim for damage or compensation or adjustment of the Purchase Price on either side.

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5. The Company undertakes that the said Lots are sold and that all other lots shown on the Layout Plan are also sold TOGETHER WITH the free right and liberty for the Purchaser its successors and assigns and its and their servants, agents, licensees and invitees in common with the Company and all persons having the like right and liberty with or without vehicles at all times and for all purposes whatsoever connected with the use and enjoyment of the said lots or other lots shown on the Layout Plan to pass and repass along over and upon all roads shown on the Layout Plan TOGETHER also with the full right and liberty to make all necessary connections and thereafter to use in a proper manner the drains, sewers, pipes, cables or wires laid or constructed by the Company under or over the said roads for the purpose of the supply of water, electricity and telephone services to and for drainage of water and sewage from the said Lots RESERVING NEVERTHELESS to the Company and all others to whom the Company may grant or have already granted the same or similar rights of way and drainage and of making connections as aforesaid the right to construct lay and use any drains sewers pipes and cables or wires over or under the said roads of the said Lots which the Company or such others may consider necessary for the purpose of serving other buildings erected or to be erected on other lots shown on the Layout Plan and to make all necessary connections thereto.

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6. The said houses shall be of the type and design in accordance with the plans and specifications which have been shown to and inspected by

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the Purchaser and which for purposes of identification have been signed by the Purchaser and the Company and attached hereto as Schedule 'C'. The said houses shall be constructed in a good and workmanlike manner and in compliance with generally recognised building standards and practice. The Company however reserves the right from time to time to make modifications to the plans, specifications and details of the said houses if the local or other authority having authority in that behalf shall so direct or require or if the Company's architect shall in the circumstances of the case consider it necessary or expedient and in such case with the written consent of the Purchaser, without however incurring any extra cost or liability of any kind whatsoever to the Purchaser in respect thereof and without the Purchaser being entitled to any reduction of the Purchase Price or any damages in respect thereof PROVIDED ALWAYS that any alteration or substituted materials involved shall be of the same quality and standard of workmanship as those set out in the aforesaid plans, specifications and details. Conversely, if the Purchaser shall require works of a minor nature to be done, the Company shall carry out the same in a substantial and workmanlike manner, whereupon the Purchaser shall reimburse the Company for any extra cost thereby incurred.

7. The Company shall conform to the provisions of any Enactment or Ordinance and to any regulations or bye-laws for the time being in force affecting the said houses and will give all necessary notices to and obtain the requisite sanction of the local or other authority in respect of the construction of the said houses and generally will comply with the building and other regulations of such authority and will keep the Purchaser indemnified against all fines, penalties and loss incurred by reason of any breach of any Act Enactment Ordinance, bye-laws or regulation.

8. The Company further undertakes to apply on behalf of the Purchaser for the connection to the said houses of such water and electrical services as are provided by the local authority but all costs of the making of such connections inclusive of the cost of laying water mains and of electric supply and metering thereof shall be borne and paid by the Purchaser.

Exhibits  
 ———  
 Plaintiffs'  
 Exhibits

P.4

Agreement  
 between  
 Plaintiffs  
 and  
 Defendants

23rd August  
 1966  
 (continued)

Exhibits  
-----  
Plaintiffs'  
Exhibits  
P.4  
Agreement  
between  
Plaintiffs  
and  
Defendants  
23rd August  
1966  
(continued)

9. The Company shall at its own cost and expenses construct and make up approach roads and drains in accordance with the requirements of the local authority and shall do everything possible to have the same taken over and adopted by the local authority but until they are so taken over and adopted the Purchaser shall from time to time contribute a fair and rateable proportion of the cost and expense of their maintenance and repair such apportionment to be made by the Company's surveyor and to be accepted as final and binding by the Purchaser.

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10. The Purchaser shall pay to the Company for all outgoings including quit rent rates and assesment in respect of the said Lots as from the date of completion of building construction in respect of each and all of the said houses a proportion of the outgoings quit rent rates and assessments payable in respect of the said Lots. The amount payable in respect of the said Lots shall be such proportion of the total outgoings paid by the Company in respect of the said Lands as the area of the said Lots bear to the total area of the said Lands excluding the area reserved for roads open spaces as shown on the Layout Plan and the Purchaser shall continue to pay to the Company the aforesaid share of the outgoings quit rent rates, assessments in respect of the said Lots until separate documents of title to the said Lots are issued and the said Lots are transferred to the Purchaser as hereinafter provided, whereupon it shall then continue to pay such sum directly to the appropriate authorities concerned.

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30

11. (a) The Company shall complete the building construction for the said 65 houses within 21 months from the date hereof and complete building construction of the remaining 43 houses within 36 months from the 23rd day of August 1966 and time shall be the essence of this contract.

PROVIDED ALWAYS that the Company shall not be liable for any delay occasioned by war, strikes, lockout, civil commotion, force majeure, inclement weather of abnormal duration, loss or damage by fire, flood or tempest, or other like cause outside the Company's control.

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(b) In the event that the Company shall fail to complete the said houses within the periods

stipulated in sub-clause (a) above except for the reasons stated in the proviso in sub-clause (a) the Company shall pay to the Purchaser by way of liquidated damages the sum of \$150.00 for each and every month of delay in the completion of each house.

10 12. The Purchaser shall purchase the remaining 43 lots together with the buildings to be erected thereon for a total price of Dollars One Million Seven Hundred and Fifty Nine Thousand Nine Hundred and Twenty-five (\$1,759,925.00) and make progressive payments to the Company pursuant to the instalments in Schedule 'C' annexed hereto.

20 13. Possession of each of the said houses will be given to the Purchaser on completion of the building construction thereof and upon the Purchaser having duly paid to the Company all moneys equal to the full value of such houses and the Purchaser having duly complied with the terms and covenants on its part to be observed in this Agreement.

30 14. It is expressly agreed and declared by the parties hereto that the Purchaser shall not be entitled to call for a transfer of the said lots before the issue of a separate document of title to all of the said Lots although the Purchaser may or shall have paid all whatsoever sums of money due and owing by it to the Company under the terms of this Agreement but shall continue to hold as licensee from the Company pursuant to the terms of this Agreement. Upon the issue of all the documents of title to the said Lots PROVIDED the Purchaser shall have paid to the Company all moneys payable under this Agreement AND PROVIDED FURTHER that the Purchaser shall have performed and observed the provisions of this Agreement the Company shall execute valid and registrable transfers of the said Lots to the Purchaser or the Purchaser's nominee.

40 15. If the Purchaser shall -

- (a) fail to pay any of the instalments of the total Purchase Price in accordance with the provisions of Clause 2(b) above; or
- (b) commit any breach of the terms and conditions in this Agreement; or

Exhibits  
—  
Plaintiffs'  
Exhibits

P.4

Agreement  
between  
Plaintiffs  
and  
Defendants  
  
23rd August  
1966  
(continued)

Exhibits  
—  
Plaintiffs'  
Exhibits  
P.4

(c) before payment in full of the total Purchase Price enter into any composition or arrangement with its creditors or enter into liquidation whether compulsory or voluntary; or

Agreement  
between  
Plaintiffs  
and  
Defendants  
23rd August  
1966  
(continued)

(d) if any execution be levied upon the Purchaser or its goods,

then and in any of the said cases, it shall be lawful for the Company at any time thereafter to terminate the Purchaser's licence to occupy the said Lots and the said houses and to annul the sale of the said Lots and to forthwith determine this Agreement.

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16. Upon such determination as aforesaid pursuant to Clause 15 herein the Purchaser and all those claiming title under it shall within three months from the date of receipt of notice to do so vacate the said Lots and the Company shall be entitled to resell the said Lots either by public auction or private contract subject to such stipulations and generally in such manner as they may think fit. Such resale shall be made for the purpose of recovering for the Company any sums payable by the Purchaser to the Company pursuant to this Agreement and the Company shall also be entitled to retain out of the proceeds of such resale all legal expenses incurred in evicting the Purchaser and all those claiming title under it and all other necessary expenses attending such a resale or attempted resale. Subject to the Company's rights to retain any sums payable to it by the Purchaser referred to above in this clause the Company shall refund to the Purchaser out of the proceeds of such resale the amount of any payments made by the Purchaser to the Company pursuant to this Agreement. Any deficiency in price which may result on and all legal and other expenses incurred in evicting the Purchaser and all those claiming title under it and all other necessary expenses attending such a resale or attempted resale shall be made good by the Purchaser and shall be a debt due from the Purchaser to the Company and shall be paid forthwith on demand. Upon termination of this Agreement pursuant to Clause 15, neither the Purchaser, its assigns and all those claiming title under it shall have any other claims against the Company in respect of this Agreement other than and except those conferred upon it by the provisions of this clause.

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17. (a) Notwithstanding the provisions for determination of this Agreement under Clause 15 hereof, in the event that the Purchaser shall fail to pay any of the instalments of the total Purchase Price on due date, the Company may at its option, instead of exercising its right to determine this Agreement, require the Purchaser to pay interest on all moneys due at the rate of 8.4% per annum until payment.

10 (b) If upon completion of each of the said houses, the Purchaser shall have failed to pay the full total Purchase Price, the Company may at its option, instead of exercising its right to determine this Agreement, require the Purchaser to enter into an agreement to pay interest on all moneys then due on such lot or lots at the rate of 8.4% per annum and to pay all such moneys by instalments in such amounts and on such terms and conditions as the Company may decide and set out in separate agreements prepared by the Company's Solicitors in  
20 respect of each such lot upon which moneys are due to the Company.

18. In the event of the Company failing to obtain a subdivision of the said Lands and being unable to provide separate documents of title, the Purchaser shall have the right to have refunded forthwith to it all moneys that may have been paid to the Company together with interest at the rate of 8.4% per annum until refund and upon such refund, neither party shall have any claim against the other under this Agreement.

30 19. Any defects shrinkage or other faults in the said Lots which shall become apparent within the period of six (6) months after the date of completion of building construction in respect thereof and which are due to defective workmanship or materials not in accordance with this Agreement shall within a reasonable time after receipt of notice of such defects or faults from the Purchaser be made good by the Company at its own cost. In the event of any dispute arising the  
40 decision of an Architect to be appointed by the parties (the cost thereof to be borne by the parties equally) shall be binding upon the parties hereto as to whether such defects or faults fall within the scope of this clause and whether the Company is bound to make good the same to the Purchaser.

Exhibits  
—  
Plaintiffs'  
Exhibits  
P.4  
Agreement  
between  
Plaintiffs  
and  
Defendants  
23rd August  
1966  
(continued)



Exhibits

Plaintiffs'  
Exhibits

P.4

Agreement  
between  
Plaintiffs  
and  
Defendants23rd August  
1966  
(continued)

20. (a) As soon as the Company shall have brought on to the said Lands, building materials and equipment for the construction of the said houses, it shall insure at its expense the same against loss or damage by fire and upon any of the said houses reaching the first floor level it shall also insure at its expense the same against loss or damage by fire and shall continue to keep the same so insured at its expense until completion thereof when sub-clause (b) shall apply.

(b) Upon completion of each of the said houses and until one year from the date of payment by the Purchaser of all moneys whatsoever owing to the Company in respect of each house, the same shall be insured by the Company against loss or damage by fire but the Purchaser shall pay the premium therefor.

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21. The Purchaser by its representatives shall at all reasonable times have access to the site, premises and workshops or other places where materials are being prepared and stored for the construction of the said houses.

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22. The Purchaser shall have the liberty to appoint a Clerk of Works whose duty shall be to act solely as inspector on behalf of the Purchaser and the Company shall afford him every facility for the due performance of his duties.

23. The Schedules 'A', 'B', 'C' and 'D' hereto shall be taken read and construed as an integral part of this Agreement.

24. The Company's and Purchaser's costs in respect of this Agreement, the Agreement referred to in Clause 16 hereof and the transfers of the said Lots under Clause 14 herein including stamp duty (if payable) thereon shall be borne by the Purchaser, the legal fees being at such amounts as may be agreed between the legal firm and the Purchaser.

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25. Any notice required to be given under this Agreement shall be in writing and shall be sufficiently served on the Company by registered letter addressed to it at its address stated herein and shall be sufficiently served on the Purchaser by registered letter addressed to it at its address stated herein and shall be deemed to have been

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received by the addressee in the ordinary course of post.

IN WITNESS WHEREOF the Company and the Purchaser have caused their respective common seals to be hereunto affixed the day and year first above written.

The Common Seal of NANYANG )  
DEVELOPMENT (1966) SENDIRIAN )  
BERHAD was hereunto affixed )  
in the presence of :- )

Sd. Illegible Director

Sd. Illegible Secretary

The Common Seal of THE )  
MALAYSIAN ARMED FORCES CO- )  
OPERATIVE HOUSING SOCIETY )  
LIMITED was hereunto affixed )  
in the presence of :- )

Sd. Illegible  
Chairman,  
Malaysian Armed Forces,  
Co-operative Housing Society Limited.

Sd. Illegible  
Secretary,  
Malaysian Armed Forces,  
Co-operative Housing Society Limited.

SCHEDULE 'A'

PLAN OF PROPOSED SUBDIVISION AND LAYOUT

SCHEDULE 'B' & 'C'

Description of lot areas and stages of constructions for the payment of progress payments, and total purchase price of each lot.

SCHEDULE 'D'

PLANS AND SPECIFICATIONS

Exhibits

Plaintiffs' Exhibits

P.4

Agreement between Plaintiffs and Defendants

23rd August 1966 (continued)

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Exhibits

Plaintiffs' Exhibits

P.4

Agreement between Plaintiffs and Defendants  
23rd August 1966  
(continued)

TYPE A - SPECIFICATION

- STRUCTURE : All beams, columns and slabs are to be constructed in Reinforced concrete.
- ROOFING TILES: All roof tiles are to be of Malayan Products and timbers to be of good quality.
- WINDOWS : All windows are to be of adjustable louvres.
- PAINTING : All external walls to have Snowcem and all internal walls to have Distemper. 10

GROUND FLOOR

- FINISHES : Living-room, dining-room, guest room and lobby to be provided with terrazzo tiles.
- KITCHEN : To provide 1 single aluminium sink and built-in cupboards to details, the floor to have mosaic tiles, the walls to be provided with 6" x 6" white glazed tiles datto 5'0" high. 20
- STAIRS : To provide mosaic tiles.
- HANDRAILS : Wrought iron railings and H.W. handrails to detail
- CEMENT FINISH: Store, bathroom and servant's room to provide cement rendering.

1ST FLOOR

- BEDROOM : All bedrooms in this floor to be provided with terrazzo tiles. 30

FLOOR FINISH & SANITATION

- MAIN BATHROOM: Floor to be provided with mosaic tiles. The wall to have 4 $\frac{1}{2}$ " x 4 $\frac{1}{2}$ " white glazed tiles datto 5'0" high. 1 longbath, 1 pedestal water closet with single cover and wash basin (Diamond brand)

- BATHROOM 2 : Floor to be provided with mosaic tiles. 1 pedestal water closet with single cover (Diamond brand), Walls to have  $4\frac{1}{4}$ " x  $4\frac{1}{4}$ " white glazed tiles datto 5'0" high.
- BUILT-IN CUPBOARDS : All built-in wardrobes to details. (Details plan supplied later).

Exhibits  
 ———  
 Plaintiffs' Exhibits  
 P.4

Agreement between Plaintiffs and Defendants

23rd August 1966  
 (continued)

ELECTRICAL INSTALLATION

- 10 GROUND FLOOR : Lighting points 12  
 Wall light points 4  
 Fan points 2  
 5 amps 2  
 13 amps 2  
 Cooker point 1
- 1ST FLOOR : Wall light points 10  
 Heater point 1  
 13 amp 3

TYPE C - SPECIFICATION

- 20 STRUCTURE : All beams, columns and slabs are to be constructed in Reinforced concrete.
- ROOFING TILES : All roof tiles are to be of Malayan Products and timbers to be of good quality.
- WINDOWS : All windows are to be of adjustable louvres.
- PAINTING : All external walls to have Snowcem and all internal walls to have Distemper.
- 30 GROUND FLOOR
- FINISHES : Living-room, dining-room, guest room and lobby to be provided with terrazzo tiles.
- BATHROOM IN GUEST ROOM : Floor to be provided with mosaic tiles. The walls to have  $4\frac{1}{4}$ " x  $4\frac{1}{4}$ " white glazed tiles datto 5'0" high. 1 pedestal water closet with single cover and wash basin (Diamond brand).

Exhibits <u>        </u> Plaintiffs' Exhibits P.4 Agreement between Plaintiffs and Defendants 23rd August 1966 (continued)	KITCHEN : To provide 1 single aluminium sink and built-in cupboards to details, the floor to have mosaic tiles, the walls to be provided with 6" x 6" white glazed tiles datto 5'0" high.  STAIRS : To provide mosaic tiles.  HANDRAILS : Wrought iron railings and H.W. hand-rails to detail.  CEMENT FINISH : Store, bathroom and servant's room to provide cement rendering.	10
	<u>1ST FLOOR</u>  BEDROOM : All bedrooms in this floor to be provided with terrazzo tiles.	
	<u>FLOOR FINISH &amp; SANITATION</u>  MAIN BATHROOM : Floor to be provided with mosaic tiles. The walls to have 4½" x 4½" white glazed tiles datto 5'0" high. 1 longbath, 1 pedestal water closet with single cover and wash basin (Diamond brand).	20
	BATHROOM 2 : Floor to be provided with mosaic tiles. 1 pedestal water closet with single cover (Diamond brand). Walls to have 4½" x 4½" white glazed tiles datto 5'0" high.	
	BUILT-IN CUPBOARDS : All built-in wardrobes to details. (Details plan supplied later).	
	<u>ELECTRICAL INSTALLATION</u>  GROUND FLOOR: : Lighting points 15 Wall light points 6 Fan points 2 5 amps 3 13 amps 3 Cooker point 1	30
	1ST FLOOR : Wall light points 11 Heater point 1 13 amp 3	

## SCHEDULE 'B'

1	2	3	4	5	6	7	8	9	10	11
S/LOT No.	AREA SQ.FT.	EXTRA AREA SQ.FT.	COST OF EXTRA LAND	COST OF THE BUILDING	ON SIGNING AGREEMENT	ON COMMENCEMENT OF THE BUILDING	CONSTRUCTION REACHING 1ST FLOOR LEVEL	CONSTRUCTION REACHING ROOF LEVEL	ON COMPLETION OF THE BUILDING	SELLING PRICE
96.	7,975	975	2,437.50	45,500.00	6,825.00	12,347.00	11,932.00	11,982.00	4,801.50	47,937.50
97.	6,560	-	-	45,500.00	6,825.00	11,375.00	11,375.00	11,375.00	4,550.00	45,500.00
98.	8,805	1,805	4,512.50	45,500.00	6,825.00	13,179.00	12,502.00	12,502.00	5,004.50	50,012.50
99.	8,450	1,450	3,625.00	45,500.00	6,825.00	12,825.00	12,281.00	12,281.00	4,913.00	49,125.00
100.	6,874	-	-	45,500.00	6,825.00	11,375.00	11,375.00	11,375.00	4,550.00	45,500.00
102.	6,825	-	-	45,500.00	6,825.00	11,375.00	11,375.00	11,375.00	4,550.00	45,500.00
103.	6,832	-	-	45,500.00	6,825.00	11,375.00	11,375.00	11,375.00	4,550.00	45,500.00
104.	9,093	2,093	5,232.50	45,500.00	6,825.00	13,467.00	12,682.00	12,682.00	5,076.50	50,732.50
105.	9,245	2,245	5,612.50	45,500.00	6,825.00	13,619.00	12,777.00	12,777.00	5,114.50	51,112.50
106.	7,371	371	927.50	45,500.00	6,825.00	11,743.00	11,605.00	11,605.00	4,649.50	46,427.50
107.	7,118	118	295.00	45,500.00	6,825.00	11,491.00	11,447.00	11,447.00	4,585.00	47,795.00
108.	8,398	1,398	3,495.00	45,500.00	6,825.00	12,773.00	12,248.00	12,248.00	4,901.00	48,995.00
109.	7,676	676	1,690.00	45,500.00	6,825.00	12,051.00	11,797.00	11,797.00	4,720.00	47,190.00
111.	7,000	-	-	45,500.00	6,825.00	11,375.00	11,375.00	11,375.00	4,550.00	45,500.00
112.	8,420	1,420	3,550.00	45,500.00	6,825.00	12,795.00	12,262.00	12,262.00	4,906.00	49,050.00
113.	7,490	490	1,225.00	45,500.00	6,825.00	11,865.00	11,681.00	11,681.00	4,673.00	46,725.00
114.	6,930	-	-	45,500.00	6,825.00	11,375.00	11,375.00	11,375.00	4,550.00	45,500.00
115.	6,860	-	-	45,500.00	6,825.00	11,375.00	11,375.00	11,375.00	4,550.00	45,500.00
116.	6,840	-	-	45,500.00	6,825.00	11,375.00	11,375.00	11,375.00	4,550.00	45,500.00
117.	6,880	-	-	45,500.00	6,825.00	11,375.00	11,375.00	11,375.00	4,550.00	45,500.00
118.	5,630	1,630	4,075.00	36,600.00	5,490.00	10,780.00	10,168.00	10,168.00	4,069.00	40,675.00
119.	5,040	1,040	2,600.00	36,600.00	5,490.00	10,190.00	9,800.00	9,800.00	3,920.00	39,200.00
120.	5,040	1,040	2,600.00	36,600.00	5,490.00	10,190.00	9,800.00	9,800.00	3,920.00	39,200.00
121.	5,640	1,640	4,100.00	36,600.00	5,490.00	10,790.00	10,175.00	10,175.00	4,070.00	40,700.00
122.	6,820	-	-	45,500.00	6,825.00	11,375.00	11,375.00	11,375.00	4,550.00	45,500.00
123.	6,820	-	-	45,500.00	6,825.00	11,375.00	11,375.00	11,375.00	4,550.00	45,500.00
124.	6,820	-	-	45,500.00	6,825.00	11,375.00	11,375.00	11,375.00	4,550.00	45,500.00
125.	6,820	-	-	45,500.00	6,825.00	11,375.00	11,375.00	11,375.00	4,550.00	45,500.00
126.	6,820	-	-	45,500.00	6,825.00	11,375.00	11,375.00	11,375.00	4,550.00	45,500.00
127.	7,246	246	615.00	45,500.00	6,825.00	11,621.00	11,528.00	11,528.00	4,613.00	46,115.00
128.	6,310	2,310	5,775.00	36,600.00	5,490.00	11,460.00	10,593.00	10,593.00	4,239.00	42,375.00
129.	5,080	1,080	2,700.00	36,600.00	5,490.00	10,230.00	9,825.00	9,825.00	3,930.00	39,300.00
130.	4,620	620	1,550.00	36,600.00	5,490.00	9,770.00	9,537.00	9,537.00	3,816.00	38,150.00
131.	4,920	920	2,300.00	36,600.00	5,490.00	10,070.00	9,725.00	9,725.00	3,890.00	38,900.00
132.	4,840	840	2,100.00	36,600.00	5,490.00	9,990.00	9,675.00	9,675.00	3,870.00	38,700.00
133.	4,400	400	1,00.00	36,600.00	5,490.00	9,550.00	9,400.00	9,400.00	3,760.00	37,600.00

Exhibits

Plaintiffs' Exhibits

P.4

Agreement between Plaintiffs and Defendants

23rd August 1966

Schedule 'B'

## SCHEDULE 'B' (Continued)

1	2	3	4	5	6	7	8	9	10	11
S/LOT No.	AREA SQ.FT.	EXTRA AREA SQ.FT.	COST OFF EXTRA LAND	COST OF THE BUILDING	ON SIGNING AGREEMENT	ON COMMENCEMENT OF THE BUILDING	CONSTRUCTION REACHING 1ST FLOOR LEVEL	CONSTRUCTION REACHING ROOF LEVEL	ON COMPLETION OF THE BUILDING	SELLING PRICE
134.	4,400	400	\$ 1,000.00	\$ 36,600.00	\$ 5,490.00	\$ 9,550.00	\$ 9,400.00	\$ 9,400.00	\$ 3,760.00	\$ 37,600.00
135.	5,180	1,180	2,950.00	36,600.00	5,490.00	10,330.00	9,887.00	9,887.00	3,956.00	39,550.00
136.	5,460	1,460	3,650.00	36,600.00	5,490.00	10,610.00	10,062.00	10,062.00	4,026.00	40,250.00
137.	4,420	420	1,050.00	36,600.00	5,490.00	9,570.00	9,412.00	9,412.00	3,766.00	37,650.00
138.	4,400	400	1,000.00	36,600.00	5,490.00	9,550.00	9,400.00	9,400.00	3,760.00	37,600.00
139.	4,100	100	250.00	36,600.00	5,490.00	9,550.00	9,212.00	9,212.00	3,686.00	36,850.00
140.	4,120	120	300.00	36,600	5,490.00	9,270.00	9,225.00	9,225.00	3,690.00	36,900.00
141.	4,030	30	75.00	36,600.00	5,490.00	9,180.00	9,168.00	9,168.00	3,669.00	36,675.00
142.	4,180	180	450.00	36,600.00	5,490.00	9,330.00	9,262.00	9,262.00	3,706.00	37,050.00
143.	4,260	260	650.00	36,600.00	5,490.00	9,410.00	9,312.00	9,312.00	3,726.00	37,250.00
144.	4,120	120	300.00	36,600.00	5,490.00	9,270.00	9,225.00	9,225.00	3,690.00	36,900.00
145.	4,150	150	375.00	36,600.00	5,490.00	9,300.00	9,243.00	9,243.00	3,699.00	36,975.00
146.	6,880	-	-	45,500.00	6,825.00	11,575.00	11,375.00	11,375.00	4,550.00	45,500.00
147.	6,150	2,150	5,375.00	36,600.00	5,490.00	11,300.00	10,493.00	10,493.00	4,199.00	41,975.00
148.	4,810	810	2,025.00	36,600.00	5,490.00	9,960.00	9,656.00	9,656.00	3,863.00	38,625.00
149.	4,590	590	1,475.00	36,600.00	5,490.00	9,740.00	9,518.00	9,518.00	3,809.00	38,075.00
150.	4,600	600	1,500.00	36,600.00	5,490.00	9,750.00	9,525.00	9,525.00	3,810.00	38,100.00
151.	4,160	160	400.00	36,600.00	5,490.00	9,310.00	9,250.00	9,250.00	3,700.00	37,000.00
152.	4,100	100	250.00	36,600.00	5,490.00	9,250.00	9,212.00	9,212.00	3,686.00	36,850.00
153.	4,430	430	1,075.00	36,600.00	5,490.00	9, 0.00	9,418.00	9,418.00	3,769.00	37,675.00
154.	4,075	75	187.50	36,600.00	5,490.00	9,222.00	9,195.00	9,195.00	3,685.50	36,787.50
155.	4,000	-	-	36,600.00	5,490.00	9,150.00	9,150.00	9,150.00	3,660.00	36,600.00
156.	5,293	1,293	3,232.50	36,600.00	5,490.00	10,442.00	9,957.00	9,957.00	3,986.50	39,832.50
157.	7,227	227	567.50	45,500.00	6,825.00	11,599.00	11,515.00	11,515.00	4,613.50	46,067.50
158.	7,770	770	1,925.00	45,500.00	6,825.00	12,145.00	11,856.00	11,856.00	4,743.00	47,425.00
159.	8,890	1,890	4,725.00	45,500.00	6,825.00	13,265.00	12,556.00	12,556.00	5,023.00	50,225.00
160.	11,625.	4,625	11,562.50	45,500.00	6,825.00	15,9 9.00	14,265.00	14,265.00	5,708.00	57,062.50
161.	7,405	405	1,012.50	45,500.00	6,825.00	11,770.00	11,627.00	11,627.00	4,654.50	46,512.50
162.	7,452	452	1,130.00	45,500.00	6,825.00	11, .00	11,657.00	11,657.00	4,664.00	46,630.00
TOTAL: 65	400,785	44,204	\$110,510.00	\$2,672,700.00	\$400,905.00	\$ .00	\$655,773.00	\$655,773.00	\$278,400.00	\$2,783,210.00

Exhibits

Plaintiffs' Exhibits

P.4

Agreement between Plaintiffs and Defendants

23rd August 1966

Schedule 'B' (continued)

SCHEDULE 'C'

1	2	3	4	5	6	7	8	9	10	
S/LOT	AREA (Sq.ft.)	EXTRA AREA	COST OF EXTRA LAND	COST OF THE BUILDING	ON COMMENCEMENT OF THE BUILDING	ON CONSTRUCTION REACHING 1ST FLOOR LEVEL	ON CONSTRUCTION REACHING ROOF LEVEL	ON COMPLETION OF THE BUILDING	SELLING PRICE	
53.	5,847	1,847	₹ 4,617.50	₹ 36,600.00	₹ 1,470.00	₹ 10,304.00	₹ 10,304.00	₹ 4,122.50	₹ 41,217.50	
54.	5,160	1,160	2,900.00	36,600.00	15,800.00	9,875.00	9,875.00	3,950.00	39,500.00	
55.	5,338	1,338	3,345.00	36,600.00	15,978.00	9,986.00	9,986.00	3,995.00	39,945.00	
56.	5,438	1,438	3,595.00	36,600.00	} Illegible	10,048.00	10,048.00	4,021.00	40,195.00	
57.	5,260	1,260	3,150.00	36,600.00		9,937.00	9,937.00	3,976.00	39,750.00	
58.	7,344	3,344	8,360.00	36,600.00		11,240.00	11,240.00	4,496.00	44,960.00	
59.	5,464	1,464	3,660.00	36,600.00		104.00	10,005.00	10,005.00	4,026.00	40,260.00
60.	5,247	1,247	3,117.50	36,600.00		15,284.00	9,927.00	9,927.00	3,979.50	39,717.50
61.	5,100	1,100	2,750.00	36,600.00		13,740.00	9,837.00	9,837.00	3,936.00	39,350.00
62.	5,658	1,658	4,145.00	36,600.00		16,298.00	10,186.00	10,186.00	4,075.00	40,745.00
63.	6,072	2,072	5,180.00	36,600.00		16,718.00	10,445.00	10,445.00	4,178.00	41,780.00
64.	6,681	2,681	6,702.50	36,600.00		17,320.00	10,825.00	10,825.00	4,332.50	43,302.50
65.	5,320	1,320	3,330.00	36,600.00		15,960.00	9,975.00	9,975.00	3,990.00	39,900.00
66.	7,290	3,290	8,225.00	36,600.00	17,930.00	11,206.00	11,206.00	4,483.00	44,825.00	
67.	8,210	4,210	10,525.00	36,600.00	1,850.00	11,781.00	11,781.00	4,713.00	47,125.00	
68.	5,959	1,959	4,897.50	36,600.00	16,560.00	10,372.00	10,372.00	4,157.50	41,497.50	
69.	5,838	1,838	4,595.00	36,600.00	16,470.00	10,298.00	10,298.00	4,121.00	41,195.00	
70.	6,051	2,051	5,127.50	36,600.00	16,000.00	10,430.00	10,430.00	4,179.50	41,727.50	
71.	6,176	2,176	5,440.00	36,600.00	16,816.00	10,510.00	10,510.00	4,204.00	42,040.00	
72.	5,080	1,080	2,700.00	36,600.00	15,700.00	9,825.00	9,825.00	3,930.00	39,300.00	
73.	5,500	1,500	3,750.00	36,600.00	16,100.00	10,087.00	10,087.00	4,036.00	40,350.00	
74.	5,500	1,500	3,750.00	36,600.00	16,140.00	10,087.00	10,087.00	4,036.00	40,350.00	
75.	5,874	1,874	4,685.00	36,600.00	16,514.00	10,321.00	10,321.00	4,129.00	41,285.00	
76.	6,078	2,078	5,195.00	36,600.00	16,718.00	10,448.00	10,448.00	4,181.00	41,795.00	
77.	5,675	1,675	4,187.00	36,600.00	312.00	10,195.00	10,195.00	4,085.50	40,787.50	
78.	5,400	1,400	3,500.00	36,600.00	16,040.00	10,025.00	10,025.00	4,010.00	40,100.00	
79.	5,400	1,400	3,500.00	36,600.00	14,940.00	10,025.00	10,025.00	4,010.00	40,100.00	
80.	5,400	1,400	3,500.00	36,600.00		10,025.00	10,025.00	4,010.00	40,100.00	
81.	6,278	2,278	5,695.00	36,600.00		10,573.00	10,573.00	4,231.00	42,295.00	
82.	5,400	1,400	3,500.00	36,600.00		10,025.00	10,025.00	4,010.00	40,100.00	
83.	5,400	1,400	3,500.00	36,600.00	} Illegible	10,025.00	10,025.00	4,010.00	40,100.00	
84.	5,149	1,149	2,872.50	36,600.00		9,867.00	9,867.00	3,950.50	39,472.50	
85.	5,100	1,100	2,750.00	36,600.00		9,837.00	9,837.00	3,936.00	39,350.00	
86.	5,100	1,100	2,750.00	36,600.00		9,837.00	9,837.00	3,936.00	39,350.00	
87.	6,100	2,100	5,250.00	36,600.00		16,740.00	10,462.00	10,462.00	4,186.00	41,850.00
88.	6,250	2,250	5,625.00	36,600.00		16,890.00	10,556.00	10,556.00	4,223.00	42,225.00
89.	5,250	1,250	3,125.00	36,600.00		15,890.00	9,931.00	9,931.00	3,973.00	39,725.00
90.	5,250	1,250	3,125.00	36,600.00		15,890.00	9,931.00	9,931.00	3,973.00	39,725.00
91.	5,275	1,275	3,187.50	36,600.00		15,912.00	9,945.00	9,945.00	3,985.50	39,787.50
92.	5,450	1,450	3,625.00	36,600.00		16,090.00	10,056.00	10,056.00	4,023.00	40,225.00
93.	5,925	1,925	4,812.00	36,600.00	16,564.00	10,352.00	10,352.00	4,144.50	41,412.50	
94.	5,412	1,412	3,530.00	36,600.00	16,052.00	10,032.00	10,032.00	4,014.00	40,130.00	
95.	5,751	1,751	4,377.50	36,600.00	16,388.00	10,242.00	10,242.00	4,105.50	40,977.50	
TOTAL 43	246,450	74,450	₹186,125.00	₹1,573,800.00	₹703,949.00	₹439,956.00	₹439,956.00	₹176,064.00	₹1,757,925.00	

Exhibits

Plaintiffs' Exhibits

P.4

Agreement between Plaintiffs and Defendants

23rd August 1966

Schedule 'C'



IN THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL

No. 10 of 1977

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA  
(APPELLATE JURISDICTION)

B E T W E E N :

MALAYSIAN ARMED FORCES CO-OPERATIVE  
HOUSING SOCIETY LIMITED

Appellants  
(Plaintiffs)

- and -

NANYANG DEVELOPMENT (1966) SDN. BHD.

Respondents  
(Defendants)

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RECORD OF PROCEEDINGS

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Coward Chance,  
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Solicitors for the  
Respondents