

LAND ACQUISITION PROBLEMS IN CHINA – ADOPTING LAND ACQUISITION ACT 1960 OF MALAYSIA AS AN ALTERNATIVE PROCEDURE

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Abstract

Land is scarce and it is the most important resource that humans rely on. Therefore, the protection of land interests is extremely important. Land acquisition deprives the owner's interest on land. A fair and adequate compensation as well as transparent procedures are crucial for land acquisition. The aims of this study are to investigate the adequacy of compensation for land acquisition in China as compared to the Malaysian framework, and to enhance the understanding of land acquisition procedures and determination of compensation in both China and Malaysia. A case study was conducted to investigate whether the compensation for land acquisition in China is adequate and equitable. Two sets of compensation have been calculated, one based on the current compensation standard executed in China; and the other, calculated based on the market value of the land. The finding reveals that the compensation based on the current compensation standard in China is inadequate. The compensation determined by compensation standard executed varied with the market value of the land. In order to better protect the dispossessed owners in China, the compensation for land acquisition should be based on the market value of the land and other related matters such as betterment, severance, injurious affection, incidental expenses and accommodation works should be given due consideration.

Keywords: Land acquisition, acquisition procedures, compensation, market value.

1.0 Introduction

Land is one of the most important resources that everyone desires but scarce in term of supply. Land provides people with food, with the place to settle down and with the space for life activities. Land is not only significant for people's daily lives but also plays an essential role in promoting economic growth. Therefore, protection of land interest is extremely important for every person and a fiduciary duty of the government. Owing to the high rates of urbanisation and the rapidly developing economy, land acquisition activities happen more frequently. Therefore, prudence, fair and adequate compensation are of the utmost importance.

Since the implementation of the "open door" policy in 1978, China has achieved remarkable progress in economic growth and undergone a process of rapid urbanization (Chan 2003, Ding

2008). The number of cities in China has increased from 233 in the year 1981 to 661 at the end of the year 2004 (China Statistical Yearbook, various years). The high rates of urbanisation and growing economy have led to a great demand for land for infrastructure and property development projects. Meanwhile, as a country with the largest farming population in the world, China has nine hundred million rural people out of the total population of 1.3 billion (China Statistical Yearbook, 2005-2008), the collective ownership of land acts as the basis of the economic system. In order to obtain more developable land, land acquisition has become a frequently used means to meet the high demand of land. Presently, land acquisition in China is carried out according to the provisions of the People's Republic of China Land Administration Law 1986. Under the provisions, compensation is given to the dispossessed owners and occupiers. However, the compensation for rural and suburban land is limited and inadequate. The compensation is neither based on market value nor referenced to "fair compensation". Furthermore, the acquisition process is not transparent and sufficiently participatory (Chan 2003). Many problems existed in the process of land acquisition and this caused a great discontent. These problems are raising tensions and distrust between dispossessed owners and the government, as well as bringing a negative effect to the subsequent planning, implementation and development.

2.0 Background of Study

Up till now, there is no land acquisition law to cover the land acquisition issues in China. The compensation for the rural and suburban land is inadequate since the payment is according to the original use of the acquired land. Furthermore, the compensation is calculated based on the specified times e.g. an average annual production value for the last three years. Many problems have been encountered and raised tensions between dispossessed owners and the government (Ding 2008). The central government of China realised the issues of land acquisition activities and conducted studies to amend, strengthen and empower the existing provisions. Meanwhile, a number of legal professionals have been appealing for the introduction of a Land Acquisition Act to deal specifically with the particular land acquisition issues in China, in order to better protect the rights and interests of the dispossessed owners.

Essentially, land acquisition in China is the acquisition of land use right on the parcel of land since land ownership belongs to the state or the collectives. For land acquisition, both the People's Republic of China Constitution 1954 and the Land Administration Law 1986 specify that the state may acquire land for its use in accordance with the law for public interest.

With regard to the legal system in China, there are two confusable terms; "land acquisition" and "land requisition". As stated in the Law of Property Right in China, both land acquisition and land requisition are executed for public interest. However, land requisition is implemented in the case of urgency, such as emergency rescue, disaster relief and other emergency cases. Both actions are compensable and carried out in accordance with specified regulations. However, the consequence of land requisition is not related to transfer of ownership. Whatever land, property, or premise which has been requisitioned should be returned to the owner after using it.

According to Table 1 and Figure 1, the total area of acquired land in China are 3,389,000 hectares from the year 1991 till year 2005 that shows the swift growth trend of land acquisition in China. The acquired land area from the year 1991 to 1995 only takes up 13.82 percent out of the total 3,389,000 hectares. The percentage of the year 1996 to 2000 has increased to 28.81 percent whereas the percentage of the year 2001 to 2005 a leaped up to 57.37%.

Table 1: The Percentage of Land Acquisition Based on Area and Period (Unit: %)

| Area / Period | 1991 to 1995 | 1996 to 2000 | 2000 to 2005 |
|---------------|--------------|--------------|--------------|
| Eastern Part | 13.06 | 26.46 | 60.48 |
| Middle Part | 13.36 | 29.97 | 56.68 |
| Western Part | 15.14 | 29.99 | 54.96 |
| Average | 13.82 | 28.81 | 57.37 |

(Source: Lee and Jia, 2006)

Figure 1: The Average Percentage of Land Acquisition Based on Different Periods

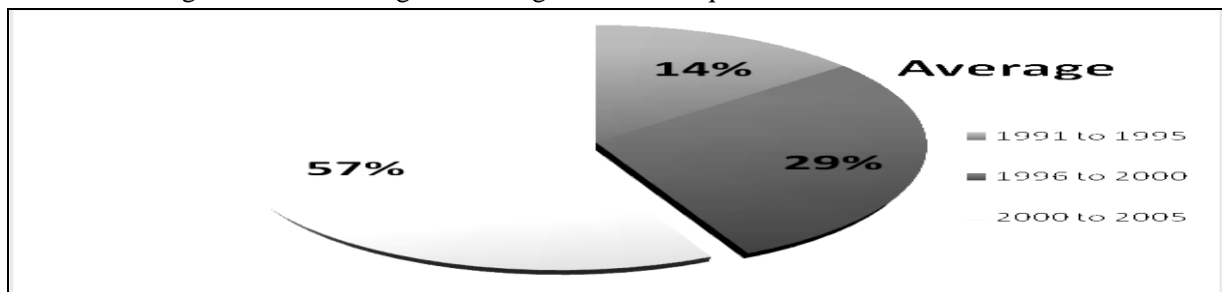


Figure 1

(Source: Lee and Jia, 2006)

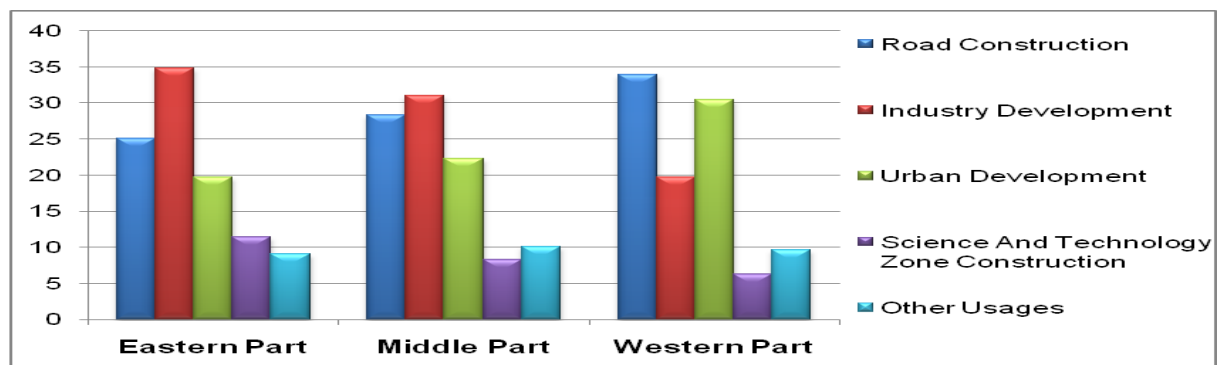
According to Lee and Jia (2006), in general, the usages of land acquired are mainly for road construction (29.11%), industry development (28.49%), urban development (24.16%), Science and Technology Zone construction (8.64%) and others (9.6%) (Table 2 and Figure 2).

Table 2: The Usages of Land Acquisition Based on Area (Unit: %)

| Purpose / Area | Eastern Part | Middle Part | Western Part | Average |
|--|--------------|-------------|--------------|---------|
| Road Construction | 25.08 | 28.27 | 33.96 | 29.11 |
| Industry Development | 34.78 | 30.95 | 19.74 | 28.49 |
| Urban Development | 19.73 | 22.32 | 30.43 | 24.16 |
| Science and Technology Zone Construction | 11.37 | 8.33 | 6.23 | 8.64 |
| Other Usages | 9.03 | 10.12 | 9.64 | 9.60 |

(Source: Lee and Jia, 2006)

Figure 2: The Usages of Land Acquisition Based on Area (Unit: %)



(Source: Lee and Jia, 2006)

A study of land acquisition in China and Malaysia was carried out with the aims to enhance the understanding of the basic legal framework related to land system and land acquisition. China and Malaysia are under different system of laws; nonetheless, the experiences of land acquisition in Malaysia are precious for China to study and use as reference. In Peninsular Malaysia, the main legislation affecting land ownership and titles is the National Land Code 1965. There are two types of land ownership under the National Land Code 1965; the first one is "land held in perpetuity", which is commonly known as "freehold land", while the second one is "land held for a term of years", which is known as "leasehold land" (Salleh Buang, 2002). Land acquisition in Malaysia is governed by Article 13 of the Federal Constitution 1957 and the Land Acquisition Act 1960. The compensation for land acquisition is based on market value and reflects the will of relevant parties. Thus, land acquisition in Malaysia is considered fair in term of the procedures and compensation.

3.0 Objectives

The objectives of this study are:

- i. To investigate the adequacy of compensation for land acquisition in China as compared to the Malaysian framework.
- ii. To suggest the principles of land acquisition compensation standard should be adopted in China by referring to the Land Acquisition Act 1960 of Malaysia.

4.0 Research Methodology

This is an exploratory type of research adopting qualitative method. Land acquisition of suburban collective land in Qingxiu District of Nanning, China was chosen as a case study. According to Yin (2002), there are six sources of data and evidence for case study research; documentations, archival records, direct observation, participant observation, physical artefacts, and interviews. The term 'case study' is strongly associated with the qualitative nature of research though it may be used in a variety of ways (Lewis, 2003). In the context of this research, the intrinsic case study approach was carried

out. This is to investigate the basis of compensation being awarded and to establish an appropriate nature of compensation for land acquisition in China. The case study also allowed for comparison between the compensation packages in China and Malaysia.

5.0 Legal Framework

The basic legal framework related to land system in China as well as land ownership and acquisition in Malaysia are explained in Appendixes A and B respectively.

6.0 Conflicts Raised Due to Land Acquisition in China

The village collective is the basic socioeconomic organization in rural areas, and its largest asset is the land collectively owned by the members (Ding, 2004). According to statistics, the total area of acquired land in China is 3,389,000 hectares from the year 1991 till the year 2005. In addition, there are more than 41 million collective members who lost their land.

There are many problems emerging due to the imperfect laws and regulations during the land acquisition exercise which have been caused a great discontent. For instance, inadequate compensation and the discordance during the implementation of the land acquisition. These problems have raised tensions and distrust between dispossessed owners and the government, as well as bringing negative effect to the subsequent planning and implementation.

The first issue is the equity of compensation. The Land Administration Law 1986 requires that the quality of life of farmers shall not be adversely affected by compulsory land acquisition (Ding, 2004), but the way to measure and to achieve this goal is not specifically stated. Actually, the compensation is far from adequate for most of the cases since the compensation for collective land is mainly calculated based on its average annual production value of the past three years (Ding, 2004).

The second issue is the non-transparency of the acquisition procedure (Ding, 2004). The law for the acquisition of state-owned land is in the process of being revised, but the revision and completion for the collective land has not started yet. So many things are not transparent enough throughout the acquisition procedure. People are puzzled on the procedures of land acquisition, entitlement to compensation, determination of compensation, and the process of an appeal for the inadequacy of compensation?

7.0 Findings

7.1 Compensation Based on Compensation Standard Executed in Nanning

As outlined in Appendix A and earlier paragraphs, the compensation payable in China is according to the original use of the land. The components of compensation for agriculture land are: land compensation, allowance for resettlement, compensation for improvement, and compensation for green crop. All the sites have been acquired by the government in November 2008. The compensation

calculated for each selected site was based on the compensation standard executed in Nanning in year 2008 as shown in Tables 3 and 4.

Table 3: The Information of Selected Sites Related to Compensation Standard Executed in Nanning

| Acquired Site | Category | Adjustment Factor | Type of Land | Land Area(mu) | Compensation Standard (CNY/mu) | Composite Price (CNY/mu) |
|---------------|----------|-------------------|----------------|---------------|--------------------------------|--------------------------|
| Site A | I | 1.0 | Irrigable land | 21.48 | 12,600 | 50,000 |
| | | | Orchard | 80.96 | 12,600 | 50,000 |
| Site B | I | 1.0 | Irrigable land | 46.33 | 12,600 | 50,000 |
| | | | Orchard | 30.83 | 12,600 | 50,000 |
| Site C | I | 1.0 | Paddy field | 67.50 | 18,000 | 55,000 |

- “mu” is a traditional unit of area used in China. 1 mu = 666.67 square metres.

Table 4: The Compensation Standard Executed in Nanning

| Acquired Site | Land Compensation | Allowance for Resettlement | Compensation for Improvement | Compensation for Green Crop | Total |
|---------------|-------------------|----------------------------|------------------------------|-----------------------------|-----------|
| Site A | 1,290,744 | 3,831,256 | 689,600 | 362,504 | 6,174,104 |
| Site B | 972,266 | 2,885,934 | 532,700 | 206,721 | 4,597,621 |
| Site C | 1,215,000 | 2,497,500 | 1,367,000 | 135,000 | 5,214,500 |

As presented in Table 4, the total compensation for Site A, B and C are CNY6,174,104, CNY4,597,621 and CNY5,214,500 respectively. Site A involves the biggest amount of compensation followed by Site C and Site B. The difference in compensation for each site is the result of dissimilarity of land area, type of land as well as the different amounts of compensation for improvement.

According to the compensation standard executed in Nanning, different compensation rates were adopted for different types of land. Site A has the largest land area whereas Site C enjoys the highest rate of compensation amongst the three sites. Coincidentally, in terms of land compensation, Site A and Site C derived almost the same amount of monetary compensation although Site A is 30% bigger than Site C. Site B obtained the lowest land compensation amongst the three sites due to its smallest land size and the imposed lower rate of compensation. In terms of allowance for resettlement, the

compensation was varied according to the composite price as well as the land size, since all the sites are under the same category. Moreover, the compensation for legitimate buildings and structures erected on the land are calculated in compensation for improvement. However, the compensation varies from site to site. It is not only related to the number of buildings, but also related to the type and quality of the buildings. Site C obtains the biggest amount of compensation for improvement in this study.

If the compensation for improvement is eliminated, the remaining compensation is considered as the compensation for the land and the crops grow on it. Meanwhile, the compensations for land and crop are almost the same for Site A and Site B because both sites are comprised the same type of land which are irrigable land and orchard. However, orchard enjoys a higher compensation than irrigable land. Since there is larger portion of orchard in Site A as compared to Site B, the compensation for Site A was slightly higher than for Site B.

7.2 Compensation Based on Market Value

According to Malaysian Valuation Standards, the term ‘Market Value’ means ‘the estimated amount for which a property should exchange on the date of valuation between a willing buyer and seller in an arm’s length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion’. Therefore, the compensation includes the market value of land and other related matters such as betterment, severance, injurious affection, incidental expenses and accommodation works and is considered as adequate compensation.

In this study, residual method has been adopted to achieve the market value of the selected sites. There is no betterment, severance, injurious affection, incidental expenses and accommodation works incurred by the land acquisition and the compensation for each site is only related to the market value of the land. In order to calculate the gross development value, the allowable built-up area and the average selling price at the date of acquisition must be determined first. The sites were acquired in November 2008 and the planning details of each site were imposed by Nanning Municipal Land and Resources Bureau in November 2005. The first assumption made in this study was that the planning detail imposed in November 2005 was considered as allowable and applicable in November 2008 at the date of acquisition.

After considering the location, planning details and other related factors, the average selling price for Site A was determined at CNY3,000 per square metre, Site B at CNY2,950 per square metre and Site C CNY3,000 per square metre for residential and CNY4,500 per square metre for commercial use. The details and location of comparables are shown in Table 5 and Figure 3. Besides, the gross development costs are determined based on the particular circumstances of the sites at the date of acquisition.

The value derived from the residual method is deemed to be the ceiling price of the converted land which is the highest and best use of the land. However, as the selected sites is the agriculture land with highly potential to be developed at the date of acquisition. In addition, there is no transaction price that can truly reflect the market value of land. Therefore, the second assumption made in this study was

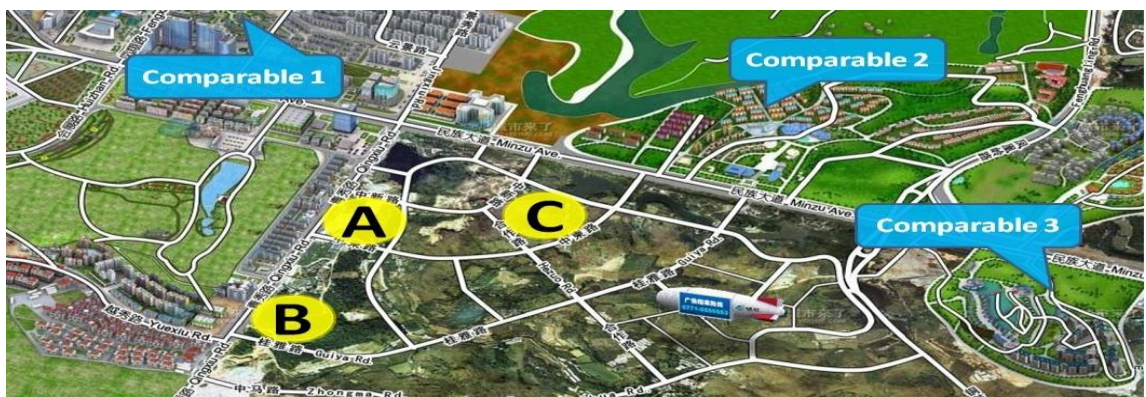
that 40% of the highest and best use value had been deducted to achieve the market value of the potential sites in this study.

Table 5: Average Selling Price of Comparables in 2008

| | <i>Comparable 1</i> | <i>Comparable 2</i> | <i>Comparable 3</i> |
|-----------------------------------|--------------------------------|--------------------------------|--------------------------------|
| Project | <i>Champs Elysees Garden</i> | <i>Rong He Landscape</i> | <i>Emerald Garden</i> |
| Location | <i>ASEAN Business District</i> | <i>ASEAN Business District</i> | <i>ASEAN Business District</i> |
| Plot Ratio | 2.5 | 1.45 | 1.72 |
| Price (CNY/ m²) | <i>Residential: 3100</i> | <i>Residential: 3200</i> | <i>Residential: 2900</i> |
| | | <i>Commercial: 4300</i> | <i>Commercial: 4200</i> |

(Source: Real Estate Market Report of Nanning City, 2008)

Figure 3: Location of the Comparables



(Source: Nanning 3D City Map, 2008)

The calculations of each site are illustrated in Appendix C. The details of each site are shown in Tables 6 and 7. Plot ratio for each site was 3.5, 2.5 and 6.5 respectively.

Table 6: Details of Acquired Land

| Acquired Site | Category | Type of Land | Plot Ratio | Land Area(mu) |
|----------------------|-----------------|---------------------|-------------------|----------------------|
| Site A | I | Irrigable land | 3.5 | 21.48 |
| | | Orchard | | 80.96 |
| Site B | I | Irrigable land | 2.5 | 46.33 |
| | | Orchard | | 30.83 |
| Site C | I | Paddy field | 6.5 | 67.50 |

(Source: Nanning Municipal Land and Resources Bureau)

There are six housing projects located in the surrounding area in 2008. The average selling prices of the surrounding developments projects in November 2008 are shown in Table 7.

Table 7: Details of Surrounding Development Projects in 2008

| Project | Plot Ratio | Average Selling Price (CNY/ m ²) |
|-----------------------|------------|--|
| Champs Elysees Garden | 2.50 | Residential: 3100 |
| Dongjing Garden | 2.50 | Residential: 3000 |
| Rong He Landscape | 1.45 | Residential: 3200; Commercial: 4300 |
| Emerald Garden | 1.72 | Residential: 2900; Commercial: 4200 |
| Great Nature Garden | 1.00 | Residential: 3400 |
| New Dawn Villa | 0.70 | Residential: 3600 |

(Source: Real Estate Market Report of Nanning City, 2008)

The market values of Site A, B and C were determined as CNY308,553, CNY163,381 and CNY537,150 per *mu* respectively; or, CNY463, CNY245 and CNY806 per square metre respectively. Site C obtained the highest value. The value of Site C per square metre was 1.75 times against Site A and 3.29 times against Site B, because of the highest permissible plot ratio, as well as the 20% allowable commercial area, although the building cost for mixed development was determined as higher than residential building.

At the same time, the value of Site A was 1.89 times more than Site B, due to the location as well as the higher permissible plot ratio. Site B being further away from the main avenue, achieved an average selling price per square metre which was less CNY50 than for Site A. Besides, the permissible plot ratio of Site B was 2.5 whereas Site A it was 3.5. As a conclusion, the value of a site is mainly affected by the location, permissible plot ratio, type of building (commercial, residential), building cost and so on.

7.3 Comparison between Compensation Standard and Market Value

Abstracted from the study and calculations in Appendix C, the determined compensations for each site were summarised in Table 8. Comparing the two different results for each site, the compensation based on compensation standard were always lower than the market value of the land. To be more specific, the compensation determined by market value for Site A was 5 times more than the compensation determined by compensation standard. Similarly, the market value for Site B was 2.75 times more than the compensation determined by compensation standard whereas Site C obtained the biggest difference which was 6.9 times. Notably, the difference between the market value and the compensation determined by compensation standard was obvious and varied with the market value of the land, since the compensation determined by compensation standard was based on the original use of the land. At the same time, Site C possesses the highest value of land and the biggest difference which was 6.9 times. In summary, the higher the potentiality of the land, the bigger the differences in the compensation.

Table 8: Comparison between Compensation Standard and Market Value

| | Compensation Standard | | Market Value | |
|--|-----------------------|-----------------------|-------------------|-----------------------|
| | (CNY/ <i>mu</i>) | (CNY/m ²) | (CNY/ <i>mu</i>) | (CNY/m ²) |
| | | | | |

| | | | | |
|---------------|--------|-----|---------|-----|
| Site A | 60,269 | 90 | 308,553 | 463 |
| Site B | 59,582 | 89 | 163,381 | 245 |
| Site C | 77,252 | 116 | 537,150 | 806 |

8.0 Conclusion

The aims of this research are to enrich the knowledge of land acquisition in China and to provide the new insights into the improvement of land acquisition in China. The improvement of land acquisition in China is timely and relatively significant. If the land acquisition process becomes more transparent, people will be able to know where and when their land will be acquired and how much they will be compensated for it. This transparency will help to reduce corruption and as well as to improve land management system (Ding, 2004). The improvement of land acquisition procedure in China will also help to protect the farmland and farmers' rights and interests. And it is crucial for China to implement the "new socialist countryside" programme and maintain the stability, sustainability and flourish of socialism (Ding, 2004).

The previous study carried out by Chan (1999; 2000), Ding (2003; 2004) and Han (1999) shows that the compensation standard for land acquisition in China is unsuitable and the compensation payable inadequate as proved by the findings from a case study in Qingxiu District of Nanning, China. There is a difference between the market value of the land and the compensation determined through the execution of compensation standard. In order to better protect the dispossessed owners, the suitable compensation standard of land acquisition in China should be based on the market value of the land as practised in Malaysia. Other related matters such as betterment, severance, injurious affection, incidental expenses and accommodation works should also be given due consideration. Last but not the least, the improvement of land acquisition procedure in China will optimize allocation of land resources, when the compensation of land acquisition is based on "fair value". The improvement will definitely help in enhancing the strategy for sustainable development.

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APPENDIX A

| No | Item | Land System and Acquisition in China |
|----|---------------------------|--|
| 1. | Land Ownership | <p>China upholds the socialist system of public ownership. Public ownership of land is entrenched in the People’s Republic of China Constitution 1954. There are two types of land ownership in China: state ownership and collective ownership. According to the People’s Republic of China Constitution 1954, all land in urban areas are owned by the state and called state-owned land. All agricultural land and homesteads in suburban and rural areas are owned by rural collectives and called collective land. Besides, the unutilised land in mountain and other remote areas is also considered as state-owned land. (Zhang, 2005)</p> |
| 2. | Land Use Rights System | <p>After the introduction of the ‘open door’ policy in 1978, China has adopted the Land Use Rights System in which the ownership and the use rights of land have been separated for the state-owned land (Chan, 2003). Under this new system, the rights to use land are known as ‘Land Use Rights’, and formally written into the People’s Republic of China Assignment and Transfer of Use Rights of State-Owned Land in Urban Areas Temporary Regulations, 1990 (PRCLUR). Through this more advanced system which compares with the preview one, individuals are allowed to possess the land use right which has been separated from the land ownership? “It states that land and buildings and improvements are regarded as two separate entities. Land users may use the land and own the buildings and improvements on it, but the ownership of the land remains in the hands of the State or farmer collectives” (Chan, 2000).</p> <p>“The land ownership in China still under the public ownership and not transferable, however, the land use right can be assigned and transferred in accordance with law” (Han, 1999). With regard to the land use right of the state-owned land, under the PRCLUR, domestic and foreign firms, enterprises, organisations, and private individuals may obtain land use right from the government (Regulation. 3) that are subject to the payment of an assignment premium (Regulation. 8) by the ways of agreement, tender, or auction (Regulation. 13). For the grant term of land use right of state-owned land, usually the Chinese government grants 70 years leases for residential land use, 50 years leases for industrial use and 40 years leases for retail uses. (Land Administration Law 1986)</p> <p>On the other hand, the land use right of the collective land is also provided by the Land Administration Law 1986 and Law of the People’s Republic of China on Land Contract in Rural Areas 2002. The stipulated provisions of Law of the People’s Republic of China on Land Contract in Rural Areas 2002 states that the rural collectives are provided land use rights through the land contracting or the lease of collective land on a fixed term. The provision states that, “The term of contract for cultivation land is legally prescribed as 30 years; the term of contract for grassland may range from 30 to 50 years; and the term of contract for forestland may range from 30 to 70 years. Nevertheless, if with special purposes, the term can be prolonged upon approval by the administrative department responsible for forestry of the State Council.” (Han, 1999)</p> |
| 4. | Acquisition of Collective | <p>For the purpose of public interests, the state may acquire collective land in accordance with law and make compensations. Under the stipulation of Land Administration Law 1986, if any construction requests land, the land use unit</p> |

| | | |
|----|----------------------------------|--|
| | Land | <p>must apply for the state-owned land. However, only state-owned land can be granted by the state; collective land cannot be granted unless it is firstly transferred to the state. (Zhang, 2005) In accordance with the existing land system as well as insist upon implementing of “Protection of Farmland” policy, there is the very limited quota for agriculture conversion each year. Therefore, the compulsory land acquisition seems becomes the only means of transfer collective land to state-owned land.</p> |
| 5. | Compensation for Collective Land | <p>Under section 47 of the Land Administration Law 1986, the compensation payable is according to the original use of the acquired land. The compensation for the agriculture land includes the land compensation, allowance for resettlement, compensation for improvement and compensation for green crop.</p> <p>For acquisition of agriculture land, the land compensation payment is calculated based on its average annual production value of the past three years prior to acquisition, and shall be in the range of 6 to 10 times. In addition, for the allowance for resettlement, the standard payment to each person who needs to be resettled is based on 4 to 6 times the average annual production value of the land taken in the past three years prior to acquisition. However, the maximum payment of the allowance for resettlement for each hectare shall not be higher than 15 times of the average annual production value. The Land Administration Law 1986 further states that: “If the land compensation and allowance for resettlement payments are insufficient to maintain the dispossessed farmers' original quality of life level, the amount of allowance for resettlement payment can be increased pending approval by the relevant authorities. But the total payment for land compensation and allowance for resettlement shall not exceed 30 times of the average production value of the acquired land in the past three years prior to acquisition.” For the compensation for improvement and crop, is determined by the provincial localities jurisdiction. (Chan, 2003 and Land Administration Law 1986)</p> <p>Why the total payment for land compensation and allowance for resettlement shall not exceed 30 times of average annual production value of the past three years prior to acquisition? Wang Xixing, a Peking University professor explains that in most cases the contract for cultivation land is legally prescribed as 30 years; therefore, the compensation payable is based on 30 years average annual production value. Nevertheless, Wang claims that after the contract expires, the land still belongs to the rural collectives, and the land still can contracting or lease for another fixed term. Government can only obtains 30 years land used right instead of the ownership of the land, since government only compensate for 30 years average annual production value. Thus, the compensation based on the current standard is not rational and inadequate.</p> <p>At the same time, Lee and Jia’s research study in year 2006 shows that there are only 22.24% of the dispossessed owners totally agree with the land acquisition. However, more than 60% of the dispossessed owner judge the activities of land acquisition mainly based on the compensation. If the compensation is adequate, the attitude of dispossessed owners toward land acquisition will become more positive.</p> <p style="text-align: center;">Table A1: The Attitude of Dispossessed Owners toward Land Acquisition (Unit: %)</p> |

| | | | Strongly Agree | Disagree | Agree, if there is adequate compensation |
|--|--|---------------------|-----------------------|-----------------|---|
| | | Eastern Part | 25.17 | 9.93 | 64.90 |
| | | Middle Part | 20.25 | 11.04 | 68.71 |
| | | Western Part | 21.29 | 11.46 | 67.25 |
| | | Average | 22.24 | 10.81 | 66.95 |

(Source: Lee and Jia, 2006)

7. Procedure of Acquisition of Collective Land

The collective land may be compulsory acquired under section 43 of the Land Administration Law 1986. Before any acquisition, the additional approval for converting agricultural land to construction land has to be obtained first. Under section 45 of the Land Administration Law 1986, any acquisition of agricultural land needs to have prior approval under section 43 for the conversion of agricultural land to construction land or non-agricultural use. Furthermore, the provision states that, “If acquiring the basic farmland or arable land other than basic farmland and more than 35 hectares or all other land exceeding 70 hectares must needs the approval from the State Council.” (Land Administration Law 1986)

Under the Article 25 of Regulations on the Implementation of the Land Administration Law 1998, after the compensation is determined and the land acquisition is approved, the land acquisition must be gazetted by the municipal, county's government of the locality whose land has been acquired. Gazette includes the number of the approval document, usage of the acquired land, scope and area of the acquired land as well as the rates for compensation of land acquisition, measures for the resettlement of agricultural personnel and duration for processing land acquisition compensation. (Land Administration Law 1986)

Persons of ownership and persons of use right of the acquired land should go to the designated competent government department to go through the registration for land acquisition compensation within the duration prescribed in the announcement.

Where a dispute arises over the compensation rates, coordination shall be carried out by local government above the county level; where coordination has failed, arbitration shall be resorted to by the government that approved the land acquisition. Land acquisition compensation and resettlement dispute shall not affect the implementation of the land acquisition plan. (Land Administration Law 1986)

Besides, the compensation payment for land acquisition should be paid in full within 3 months starting from the date of approval of the land acquisition and resettlement plan.

Figure A1: Flow Chat of Acquisition of Collective Land in China

Government decide to acquire the land and determine the compensation

↓

| | | |
|----|---------------------------------|---|
| | | <div style="text-align: center;"> <p>Granted approval for converting agriculture land to construction land</p> <p>↓</p> <p>The land acquisition gazetted by the municipal, county's government</p> <p>↓</p> <div style="display: flex; justify-content: space-around;"> <div style="border: 1px solid black; padding: 5px; width: 40%;">Take action and pay the compensation</div> <div style="border: 1px solid black; padding: 5px; width: 40%;">*If any dispute arises over the compensation rates, coordination shall be carried out by local government above the county level</div> </div> <p>↓</p> <div style="border: 1px solid black; padding: 5px; width: 40%; margin-left: auto;">If coordination failed, arbitration shall be resorted to by the government that approved the land acquisition</div> </div> <p>*Any dispute shall not affect the implementation of land acquisition plan.</p> <p>(Source: Land Administration Law 1986)</p> |
| 8. | Acquisition of State-Owned Land | <p>In general, the acquisition of state-owned land in the urban area always related to the term of “demolition and relocation” in China. The acquisition of state-owned land in China is under the Urban Buildings Demolition Relocation Administration Regulations 2001 (UBDRAR 2001). UBDRAR 2001 provides that “Any building on land covered by a city plan can be compulsorily acquired for urban development schemes”.</p> <p>Regulation 3 of the UBDRAR 2001 requires that demolition and relocation of buildings must conform to the relevant city plan and be beneficial to urban renewal, ecological environmental improvement, and the protection of cultural relics. Regulation 6 provides that, “no action of demolition and relocation can be undertaken unless a permit has been obtained from the administrative department. The unit that has obtained a demolition removal permit is known as the demolition and relocation person, whereas all persons whose buildings are affected by the demolition and relocation are known as persons subject to demolition and relocation.” The demolition and relocation person and persons subject to demolition and relocation are equivalent to the acquiring authority and dispossessed persons, respectively. (UBDRAR 2001). Compensation for the demolition and relocation of urban buildings within or without the boundaries of a city plan is governed by the UBDRAR 2001. Under Regulation 22, the acquiring authority must compensate the dispossessed persons. However, there is no compensation for illegal structures or temporary structures that have</p> |

| | | |
|--|--|--|
| | | <p>exceeded the permitted period. (UBDRAR 2001).</p> <p>UBDRAR 2001, effective since 1991, has led to numerous protests, riots and deaths during forced relocations. The UBDRAR 2001 is currently in the process of revising, and the proposed new regulation is under consultation. On 29th January 2010, the Chinese government released a draft of the new regulations for public comment. The communities are encouraged to log in "The Chinese government legal information network" comments on the draft from 29th January to 12th February 2010.</p> <p>The proposed new regulation still provides that the government can acquire the state-owned land and take over people's property in the name of "public interest". However, the scope of "public interest" has been narrow down. Seven categories are listed that constitute "public interest", including national defence projects, important public projects, the rebuilding of old and dangerous buildings, the construction of government offices and other projects deemed necessary by law or the State Council. Besides, the proposed new regulations require the government to hold public hearings before make decision of land acquisition. In addition, a specific department will be established to deal with the land acquisition issues.</p> <p>In terms of compensation, the new regulation adopts the Market Value. It promises to compensate according to the market values. The compensation can be made whether by way of full or partial substitution for monetary compensation enter into any arrangement in such property or land in a way as equitable. The compensation must be given in advanced. If any dispute arises over the land acquisition, the dispossessed persons can appeal to court in accordance with the law.</p> |
|--|--|--|

APPENDIX B

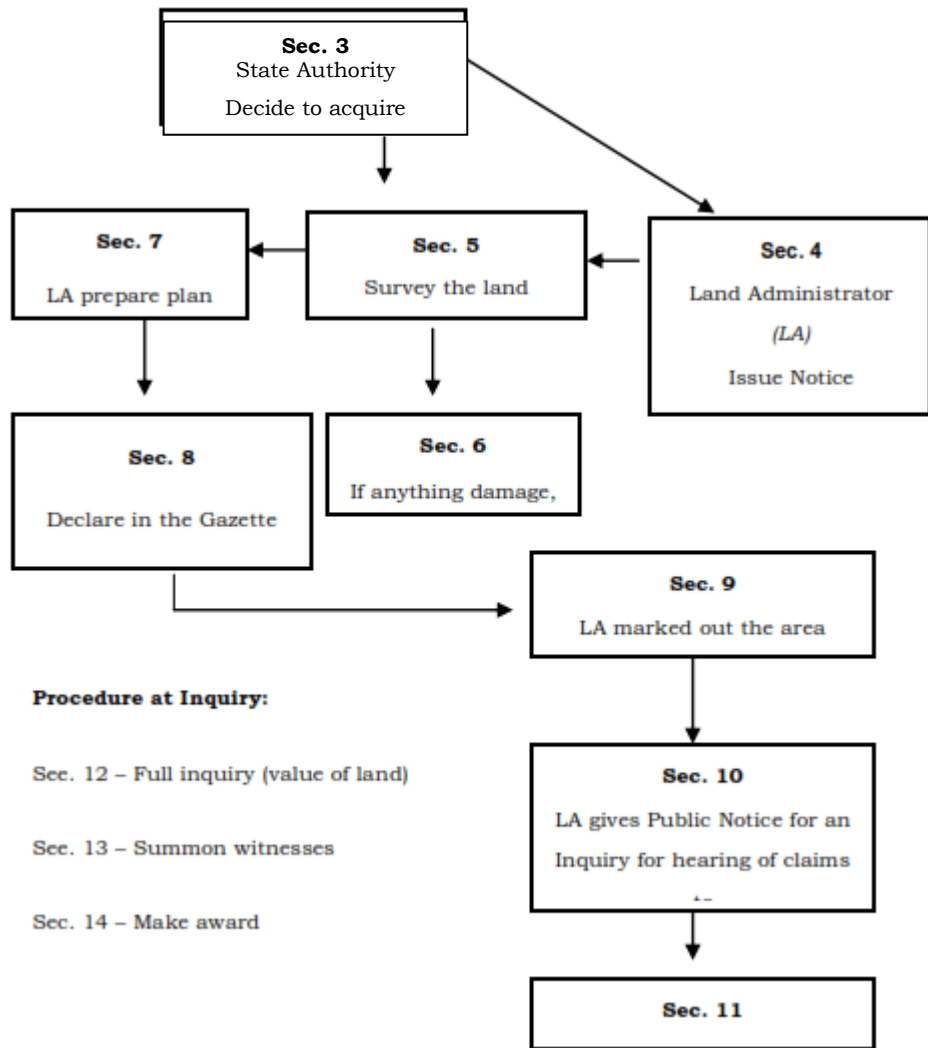
| No | Item | Land Ownership and Acquisition in Malaysia |
|----|-------------|---|
| 1. | Legislation | <p>In Peninsular Malaysia, the main legislation affecting land ownership and titles is the National Land Code 1965. "Since the law is based on the Torrens System (where 'the register is everything') ownership is evidenced by having one's name on the title. There are three routes to ownership. The first method is by 'dealings,' such as by purchase and followed by transfer, which must be in the prescribed form followed by registration at the relevant land registry. The term "dealings" includes not only transfers, but also leases, charges, easements and liens. The second is through inheritance (from one's parents or ancestors), and the third is by acquiring it through 'alienation' from the State Authority" (Salleh Buang, 2002).</p> <p>Under National Land Code 1965, there are two types of land ownership. The first one is "land held in perpetuity", which is commonly known as "freehold land". The second one is "land held for a term of years", which is known as "leasehold land". The term for leasehold land is 30, 60, and 99 years. Besides, "Land ownership carries with it certain duties. Briefly, these are - (a) paying the annual quit rent to the State Authority (in default of which the land can be forfeited by the State Authority); and, (b) complying with all the express and implied conditions affecting the land." (Salleh Buang, 2002)</p> <p>There are three categories of land use namely, "Agriculture", "Building" and "Industry" under the provision of the National Land Code 1965. Agriculture includes the cultivation of any crop (including trees cultivated for the purpose of their produce), market gardening, and the breeding and keeping of livestock and fish. Building includes any structure erected on land. And industry includes factories, workshops, foundries, warehouses, docks, jetties, railways, or other buildings or installations for use for or in connection with the purposes of manufacturing, smelting, the production or distribution of power, the storage, transport or distribution of goods, or other commodities and such other purpose as the state authority may prescribe.</p> |

| | | |
|----|-----------------------------------|--|
| | | Conversion is allowed to take place according to the law. The definition of conversion is: “Conversion process involves the application by the proprietor of alienated land to the State Authority for alteration or imposition of category of land use, the recession or amendment of any express condition or restriction for purposes of development of the land or for purposes other than that is allowed at present.” At the same time, the application must base on the prescribed in the State Land Rules and approved by the State Authority. |
| 2. | Purpose of Land Acquisition | Article 13 of the Federal Constitution of Malaysia states that “no person shall be deprived of property save in accordance with law;” and “no law shall provide for the compulsory acquisition or use of property without adequate compensation”. Furthermore, the land acquisition in Malaysia is governed by the Land Acquisition Act 1960. Section 3 of Land Acquisition Act 1960 provides the purposes of acquisition; it states that the State Authority may acquire property <ul style="list-style-type: none"> • “for any public purpose • by any person or corporation for any purpose which in the opinion of the State Authority is beneficial to the economic development of Malaysia or any part thereof or to the public generally or any class of the public; or • for the purpose of mining or for residential, agricultural, commercial, industrial or recreational purposes or any combination of such purposes.” |
| 3. | Compensation for Land Acquisition | Article 13 of the Federal Constitution requires that “adequate compensation” must be paid for every land acquisition. Land Acquisition Act 1960 states that after the Land Administrator has completed the enquiry pursuant to the provisions of section 12 thereof, he must as soon as possible thereafter assess the amount of compensation which in his opinion is “appropriate” in accordance with the principles set out in the First Schedule. For the compensation of land acquisition, the First Schedule of the Land Acquisition Act 1960 lists the principles for determining the amount of compensation. The matters to be considered in determining compensation are: <ul style="list-style-type: none"> • Market value of the land; • Betterment; • Severance; • Injurious Affection; • Incidental expenses incurred as a result of change of residence or place of business; and/or • Accommodation works. <p>To determine the compensation for market value of land is based on the “Principle of Equivalence”, no better no worse. In case of <i>Superintendent of Lands and Surveys, Sarawak vs Aik Hoe & Co. Ltd</i>, the basis of market value was based on the judgement of Privy Council in the case of <i>Vyricherla Narayana vs The Renenu Divisional Officer</i>. “The compensation must be determined by reference to the price which a willing vendor might reasonably expect to obtain from a willing purchaser.” However, the value of land is not to be estimated at its value to the purchaser, “The disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy must alike be disregarded. Neither must be considered as acting under compulsion.” The land for instance, may have a sentimental value for a vendor which far in excess of its market value. But “the compensation must not be increased by reason of any such consideration. The vendor to be treated as a vendor willing to sell as the market price.” Besides, “in the case of land, its value in general can also be measured by a consideration in the past for land of similar quality and in similar</p> |

| | | |
|----|-------------------------------|--|
| | | <p>positions, and that is what be meant in general by the market value". (Salleh Buang, 1993)</p> <p>From the study materials and notes of Dr. Roselina Binti A Shakir, there are clearly described the matters to be considered in determining compensation, which are betterment, severance, injurious affection, incidental expenses and accommodation works.</p> <p>Betterment is the increase in the value of the remaining land as a result of the acquisition. Betterment issue rises from land acquisition when there is increase in the value of land which likely to accrue from the use of land acquired will be put. The increase shall be deducted from the total compensation.</p> <p>Severance occurs when the damage sustain or likely to be sustained by the person interested at the time of the Land Administrator's taking possession of the land by reason of severing such land from his other land. For instance, the damage occurs because of shape or size of remaining land become uneconomical to be developed; or the remaining land becomes no attractive for people to invest in due to the use of land acquired will be put after the land acquisition.</p> <p>Compensation for injurious affection by reason of the acquisition injuriously affecting the property of person interested, whether movable or immovable. For example, government is intention to acquire a portion of land on an industry site, which the acquired area is the water catchment area. After land acquisition, due to the lost of water supply, the factory's productivity and income will reduced and eventually lead to the lost of value. In this case, the compensation for injurious affection should be calculated. In the other case, the land acquisition is for the purpose of construction of flyover on a residential site, anything that depreciates the value like the loss of view and noise pollution also considered as injurious affection and is justified for the compensation.</p> <p>Incidental expenses incurred as a result of change of residence or place of business due to the land acquisition, and the reasonable expenses related to such change are claimable. The "reasonable expenses" such as transportation cost, temporarily loss of business, agent fee, fee for S&P agreement and advertisement cost for re-started business.</p> <p>Accommodation works are for the construction of roads, drains, walls, fences of other facilities, provided that the undertaking is clear and enforceable.</p> |
| 4. | Procedure of Land Acquisition | <p>The procedure of land acquisition in Malaysia has been prescribed in the Land Acquisition Act 1960. The flow of land acquisition process is shown in the next page. In addition, the objection can be made with the regard to the measurement of land, the amount of the compensation, the persons to whom it is payable and the apportionment of the compensation.</p> |



Figure 6.1: Flow Chat of Acquisition of Alienated Land in Malaysia



(Source: Abdul Aziz Hussin, 1996)

APPENDIX C

| | | | |
|--|---------|-------------------------------------|---------------------------|
| Site A | | Allowable Built-up Area | 239,034 sq. m |
| Gross Development Value (GDV) | | | |
| 1) Residential Area | 239,034 | sq. m @ 3,000 per sq. m | 717,100,965 |
| Gross Development Cost (GDC) | | | |
| 1) Preliminaries | 6.8295 | hectares @ 2,800,000 per hectare | 19,122,600 |
| 2) Clearance & Earthwork | 6.8295 | hectares @ 200,000 per hectare | 1,365,900 |
| 3) Infrastructure Cost | 6.8295 | hectares @ 700,000 per hectare | 4,780,650 |
| 4) Building Cost | 239,034 | sq. m @ 1,350 per sq. m | 322,695,434 |
| 5) Professional Fee | 7% | of 3) & 4) | 22,923,326 |
| 6) Project & Administrative Cost | 30 | months @ 50,000 per month | 1,500,000 |
| 7) Sales, Marketing & Advertising Cost | 3% | of GDV | 21,513,029 |
| 8) Financing Costs | 30% | of 3) & 4) @ 12.0% for 1.5 years | 17,683,709 |
| 9) Contingencies | 5% | of 3) & 4) | 16,373,804 |
| 10) Developer's Profit | 30% | of GDV | <u>215,130,290</u> |
| Estimated Development Cost | | | <u>643,088,741</u> |
| Residual Value of Land upon Completion | | | 74,012,224 |
| PV for 3 years @ 12% | | | <u>0.7118</u> |
| Capital Value | | | 52,681,901 |
| less 40% of Capital Value | | | <u>21,072,760</u> |
| Market Value | | | <u>31,609,140</u> |
| | | say | 308,553 per mu |
| | | or | 463 per sq. metre |

Site B

Allowable Built-up Area 128,607 sq. m

Gross Development Value (GDV)1) Residential Area 128,607 sq. m @ 2,950 per sq. m **379,389,691****Gross Development Cost (GDC)**

| | | | |
|--|--------------------------------------|-----------------------|-------------|
| 1) Preliminaries | 5.1442 hectares @ | 2,800,000 per hectare | 14,403,760 |
| 2) Clearance & Earthwork | 5.1442 hectares @ | 150,000 per hectare | 771,630 |
| 3) Infrastructure Cost | 5.1442 hectares @ | 700,000 per hectare | 3,600,940 |
| 4) Building Cost | 128,607 sq. m @ | 1,350 per sq. m | 173,619,045 |
| 5) Professional Fee | 7% of 3) & 4) | | 12,405,399 |
| 6) Project & Administrative Cost | 36 months @ | 40,000 per month | 1,440,000 |
| 7) Sales, Marketing & Advertising Cost | 3% of GDV | | 11,381,691 |
| 8) Financing Costs | 30% of 3) & 4) @ 12.0% for 1.5 years | | 9,569,879 |
| 9) Contingencies | 5% of 3) & 4) | | 8,860,999 |
| 10) Developer's Profit | 30% of GDV | | 113,816,907 |

Estimated Development Cost

349,870,251

Residual Value of Land upon Completion

29,519,441

PV for 3 years @ 12%

0.7118

Capital Value**21,011,938**

less 40% of Capital Value

8,404,775

Market Value**12,607,163**

say 163,381 per mu
or 245 per sq. metre

Site C

Allowable Built-up Area 292,500 sq. m

Gross Development Value (GDV)

| | | | |
|-------------------------|-----------------|-----------------|-------------|
| 1) Commercial Area 20% | 58,500 sq. m @ | 4,300 per sq. m | 251,550,000 |
| 2) Residential Area 80% | 234,000 sq. m @ | 3,000 per sq. m | 702,000,000 |

953,550,000**Gross Development Cost (GDC)**

| | | | |
|--|--------------------------------------|-----------------------|-------------|
| 1) Preliminaries | 4.5000 hectares @ | 3,000,000 per hectare | 13,500,000 |
| 2) Clearance & Earthwork | 4.5000 hectares @ | 130,000 per hectare | 585,000 |
| 3) Infrastructure Cost | 4.5000 hectares @ | 900,000 per hectare | 4,050,000 |
| 4) Building Cost | 292,500 sq. m @ | 1,550 per sq. m | 453,375,000 |
| 5) Professional Fee | 7% of 3) & 4) | | 32,019,750 |
| 6) Project & Administrative Cost | 36 months @ | 80,000 per month | 2,880,000 |
| 7) Sales, Marketing & Advertising Cost | 3% of GDV | | 28,606,500 |
| 8) Financing Costs | 30% of 3) & 4) @ 12.0% for 1.5 years | | 24,700,950 |
| 9) Contingencies | 5% of 3) & 4) | | 22,871,250 |
| 10) Developer's Profit | 30% of GDV | | 286,065,000 |

Estimated Development Cost

868,653,450

Residual Value of Land upon Completion

84,896,550

PV for 3 years @ 12%

0.7118

Capital Value**60,429,364**

less 40% of Capital Value

24,171,746

Market Value**36,257,619**

say 537,149.90 per mu
or 806 per sq. metre