LAND TITLES (STRATA) ACT
(CHAPTER 158)

BUILDING MAINTENANCE AND STRATA MANAGEMENT
(STRATA TITLES BOARD) REGULATIONS 2005

STB NO 97 OF 2007

In the matter of an application under Section 84A of the Land Titles (Strata) Act in respect of the development known as **Rainbow Gardens** (Strata Title Plan No.1175) comprised in Land Lot No 4636A of Mukim 5

Between

1 **Goh Kok Hwa Richard**

2 **Soh Liang Liang**

3 **Lee Choon Kum Beatrice**

(representing the majority owners of Rainbow Gardens)

... Applicants

And

1 **Lim Choo Suan Elizabeth**

2 **Lim Lilian/ Lim Poh Heng/ Lim Molly/ Lim Mui Wah**

3 **Tan Peck Kheng/ Koh Hock Chuan**

4 **Chong Han Hua @ Chiyong Ah Hun/ Ho Bee Fon**

5 **Tan Kok Yang/ Koh Lee Boon**

...Respondents

Coram: **MR TAN LIAN KER**
President

Panel Members: **MR SENG KWANG BOON**
MR TANG TUCK KIM
MR TAY KAH POH
MR CHNG BENG GUAN

Counsel: **MR EDWIN LEE**
MS HAZEL TANG
(Rajah & Tann LLP for the Applicants)

MR DAVID LIEW
(M/s DSH Law Corporation for the 1st to 3rd Respondents)

MR ANDREW EE
(M/s Andrew Ee & Co for the 4th Respondents)

5TH RESPONDENTS - IN PERSON

GROUNDS OF DECISION

1. Rainbow Gardens is a condominium development with a land area of approximately 11,094.8 square metres consisting of 4 walk-up blocks of 4-storey height with a total of 64 maisonette units. It is located at the junction of Toh Tuck Road and Jalan Jurong Kechil, about 13km from the city center.

2. On 27th July 2007, the Applicants, the authorised representatives of the subsidiary proprietors ("SPs") of at least 80% of the share values in the abovementioned development, filed an application to the Strata Titles Boards ("STB") for an order for collective sale under section 84A of the Land Titles (Strata) Act ("LTSA").

3. The Respondents' objections are, inter-alia, stated as follows:-

(a) There was no consultation with the SPs as to the appointment of the legal firm and marketing agents;

(b) Whether the collective sale should be by way of a private treaty, expression of interest ("EOI") or public tender;

(c) The minimum reserve price to set for marketing the estate and to obtain proper valuation

(d) The Sales Committee ("SC") failed and/or neglected and/or refused to protect the interests of the SPs in failing and/or neglecting and/or refusing to take all measures to improve the value and therefore the marketability and pricing of the estate to interested purchasers;

(e) The Chairman of the SC breached his duties as a member of the SC in allowing his personal interests to override the interests of all the SPs of the estate;

(f) There is evidence of attempts to persuade the SPs to sign the CSA with offer of compensation and/or undeclared different prices offered to certain SPs;

(g) The EOI exercise was not carried out by the SC in a transparent manner and the circumstances surrounding the exercise gives rise to suspicion of impropriety;

(h) There is evidence to suggest that the purchaser, Premier Land, is connected to a SP;

(i) There were material misrepresentations by the SC in persuading the SPs to sign the CSA;

(j) The negative attitude of the Chairman of the SC towards the concern and interest of SPs, after the Sale & Purchase Agreement ("SPA") was signed;

(k) Valuation report obtained by the SC to support the application is biased, inaccurate and not relevant;

(l) The transaction entered into with Premier Land by the SC is not in good faith; and

(m) The rules relating to the obtaining of the 80% consent of the SPs to support this application have not been complied with.

4. The Board held 2 mediation sessions on 19th September 2007 and 22nd September 2007 without success. Accordingly, the case was fixed for hearing on 6th and 7th December 2007.

5. At the 2nd mediation session, the Respondents applied for extension of time to file further objections. The application was approved by the Board. The further objections are as follows:-

(a) The SPA is invalid as it was not signed on behalf of the selling owners by the SC or by the authorised representatives of the SC making this application to STB, in accordance with the CSA;

(b) Agreement of the SPs who signed the CSA before the CSA was finalised should not be included in the meaning of the "80% majority" in the CSA;

(c) There are irregularities in the obtaining of the signatures of the SPs to form the "80% majority";

(d) There are irregularities in the application that fail to comply with the requirements of the LTSA;

(e) There are irregularities in the application that fail to comply with the requirements of the LTSA and the Building Maintenance and Strata Management (Strata Titles Boards) Regulations ("BMSMR"); and

(f) The valuation report obtained by the SC to support this application is bias, inaccurate and not relevant.

6. During the interim period, 2 interlocutory applications were filed with the Board. The 1st application was filed by the Applicants on 10 October 2007 objecting to the filing of further objections. Their main grounds, inter alia, are as follows:-

(a) The further objections submitted by the Respondents are in contumelious delay of the statutory period provided for the submission of an objection under section 84A(4) of the LTSA;

(b) Further objections are based on matters which could have been raised earlier;

(c) The further objections raise irrelevant matters with no reasonable prospect of success;

(d) The Respondents cannot base any of their objections on the new laws and regulations which were not in effect at the material times of this application; and

(e) The allegations as contained in their further objections are frivolous, vexatious, irrelevant and inconsequential.

7. The 2nd interlocutory application was filed by the Respondents on 23 October 2007 for an order that the application in STB 97 of 2007 for a collective sale order in respect of Rainbow Gardens be struck out and/or dismissed. Their main grounds are as follows:-

(a) The Applicants' application for a collective sale order under section 84A of the LTSA did not fully comply with the statutory requirements of the Act and is therefore invalid; and

(b) The Applicants' application for a collective sale order failed to comply with the requirements of the LTSA and the Building Maintenance and Strata Management (Strata Titles Boards) Regulations ("BMSMR").

8. The Respondents urged the Board to treat their grounds as the preliminary issue. The Board agreed.

9. On 6 December 2007, the Board commenced hearing the 2 interlocutory applications simultaneously. The hearing lasted 2 days. Both parties were further asked to submit written submissions and the case was adjourned to 29 January 2008 for the Board to deliver its decision in respect of the 2 interlocutory applications.

10. On the 1st application, the Board heard the arguments and written submissions put forward by both parties. The Board noted that on 22 September 2007 when the Respondents applied for permission to file further objections, the Applicants did not object to it. In any event, the Board has the power and discretion to grant an extension of time for filing further objections. Accordingly, the Board dismissed the application with costs fixed at S$2000 to be paid by the Applicants to the Respondents.

11. As for the 2nd application, the Board has carefully considered the arguments put forward by both parties and their written submissions. After due deliberation, the Board dismissed the application and also with costs fixed at S$2000 to be paid by the Respondents to the Applicants.

Reasons for Dismissing the Preliminary Issue in respect of the 2nd Application

12. The agreed facts are as follows:-

(a) That the notice of proposed application ("the notice") was served on all the minority owners (SPs who have not signed the collective sale agreement) by:

(i) registered post; and

(ii) by placing a copy of the proposed application under the main door of the flat, together with a copy of each of the following:

- the collective sale agreement referred to in sub-paragraph (a) of Para 1(1) of The Schedule to the LTSA;

- the sale and purchase agreement which is to be the subject of the application to the Board;

- a statutory declaration made by the purchaser under the sale and purchase agreement on the nature of his relationship (if any) or, if the purchaser is a body corporate, the nature of the relationship of every one of its directors (if any), to any subsidiary proprietor of any lot comprised in that strata title plan or any proprietor of any flat in the development, as the case may be;

- the minutes of the extraordinary general meeting or meeting referred to in sub-paragraph (c) of Para 1(1) of The Schedule to the LTSA;

- the advertisement referred to in sub-paragraph (d) Para 1(1) of The Schedule to the LTSA;

- a valuation report that is not more than 3 months old; and

- a report by a valuer on the proposed method of distributing the proceeds of the sale due under the sale and purchase agreement.

(b) A copy of the notice referred to in sub-paragraph (e) of Para 1(1) of The Schedule to the LTSA in the 4 official languages was affixed to the only notice board within the development, but not to 4 other residential buildings within the development.

Non-Compliance of Some of the Statutory Requirements

13. The Respondents alleged that the notice of the application in the 4 official languages was not affixed to a conspicuous part of each building comprised in the strata title plan ("STP") or the development. It was only affixed to the sole notice board of the development near the guardhouse. The Respondents submitted that this requirement is mandatory and non-compliance would render the application invalid.

14. It is not in dispute that the notice of the application was served on the Respondents by registered post and by leaving it at their premises. The Respondents' complaint is that they have not seen the same notice placed in the 4 buildings within the development although it had been placed in the main notice board. The Applicants however submitted that the Respondents had already filed their objections. Further besides the letter boxes, notices were also pasted at the window panes near the staircases of each of the blocks. They further contended that this procedural irregularity did not in any way prejudice them in filing their objections.

Non-Compliance of Some of the Requirements of the LTSA and the BMSMR

15. The Respondents submitted that Form 1A is required to be filed in any application to the STB for a collective sale order. By not filing Form 1A, the Applicants have not complied with the BMSMR. Their application is therefore invalid and improper and should be struck out.

16. In reply, the Applicants contended that Form 1A is not a form set out in any legislation or subsidiary legislation. It is not even annexed to any such legislation or subsidiary legislation. They maintained that in order for it to be a requirement, language must be found in the LTSA or subsidiary legislation or any direction by the Board that states it is a requirement to be filed with the application for a collective sale. Form 1A can only be found on the website of the STB. There is no language on the website to state that Form 1A is to be filed.

17. They further averred that the relevant document that commences the process of the collective sale application is the notice and not the application and that the notice is the document that is required to be served on the Respondents. Time starts running from the date of service of the notice and the Respondents have 21 days to file their objection with the Board. The LTSA does not refer to the service of the application. It refers to the service of the notice and this is expressly endorsed even on the STB's website. Accordingly, they submitted that their application cannot be rendered invalid if Form 1A is not filed.

18. Form 1A is an affidavit of service. The purpose is to satisfy the Board that the Applicants' application for collective sale order has been served on all the minority owners (including the above 5 Respondents) who have not signed the CSA and who have not up to the date of the filing of the application agreed in writing to the collective sale. The Board would want to know whether the application has been served on the minority owners so as to ensure that they are aware of the orders sought by the Applicants.

19. Whether the failure to file Form 1A or serve the application contemplated therein is a material non-compliance would depend on the facts of each case. In this instant case, the orders sought by the Applicants are standard and non-controversial and do not prejudice the minority owners notwithstanding that they were not served the application.

20. The Board is of the opinion that Form 1A is a procedural requirement but it is not a statutory requirement that parties must file it. Regulation 28 of the BMSMR empowers the Board to waive procedural requirements if there are exceptional circumstances justifying such waiver. Even assuming it is a statutory requirement to file Form 1A, the Board is of the opinion that failure to file it should not render the Applicants' application invalid as the procedural irregularity did not prejudice or significantly impair the objectors' right in filing their objections. In the Board's opinion, Parliament would not have intended that the approval of the sale by the Board should be invalidated by reason of such a procedural irregularity. For the above reasons, the Board is of the view that the Applicants' failure to file Form 1A or to serve the application on the minority owners does not invalidate this application.

The Law Applicable to Non-Compliance with some of the Statutory Requirements

21. On the issues raised by the Respondents regarding non-compliance of some of the statutory requirements, the Board is bound by the decision of Justice Andrew Ang in *Ng Swee Lang and Another v Sassoon Samuel Bernard and Others* [2007] SGHC 190 (*"the Phoenix Court"*), where Ang J had identified the purpose for setting out detailed procedures in the LTSA as giving adequate notice of the sale and its terms in order for the relevant parties to decide whether or not to lodge objections with STB. Ang J held that it was not intended by Parliament to put absolute obstacles before the Board when it is deciding whether to grant an order of sale. At the end of the day, each objection must be examined on its own facts and the particular requirement breached set against the overall purpose of the legislation. One should then consider whether a strict construction and the invalidation of the Board's order is what Parliament would have intended taking into account any prejudice to the rights of parties and the public interest if any.

22. At paragraph 65 of Ang J's judgment, he opined that procedural irregularities that did not prejudice or significantly impair the minorities' right...should not affect the determination of the Board to allow the sale to proceed as it is enjoined to do.

23. It is clear from the judgment of Ang J in the *Phoenix Court* that the modern approach in Singapore when it interprets the Act is to look at the "whole scheme and purpose of the Act and by weighing the importance of the particular requirement in the context of that purpose and by asking whether the legislature would have intended the consequence of a strict interpretation, having regard to the prejudice to private rights and the claims of the public interest (if any)." Ang J further elaborated that the "procedures were not built in as absolute obstacles to be surmounted on pain of the Board being precluded from exercising jurisdiction if any of the procedural requirements were not met, regardless of whether and to what extent the interests of the minority were affected." Like any case, each objection must be examined on its own fact and the particular requirement breached set against the "overall purpose of the legislation." The instances where the Board may strike down an application is limited to the provisions spelt out in section 84A(7) to (9) of the LTSA.

24. The judgment of Ang J in the *Phoenix Court* was upheld by the Court of Appeal on 29 January 2008. The Court of Appeal sets out the principles that a court will apply in deciding whether or not non-compliance by the Applicants of a requirement in the LTSA is fatal to the application. If the failure was a procedural irregularity and not a jurisdictional condition, the Board could waive the irregularity. At paragraph 35 if the judgment, the Court of Appeal stated:-

"We should further add that, having regard to the policy objectives of the collective sale scheme, there is no basis for this court to set aside the collective sale order made by the Board in this present case. Indeed, there is a very strong basis to uphold it in order to affirm the general principle that the courts should not allow what is, in the present case, a truly technical objection to frustrate the wishes of the Majority Owners when the appellants have suffered no prejudice whatsoever from the failure of the S&P Agreement to specify the distribution method."

25. It is therefore clear from the judgment of the Court of Appeal in the *Phoenix Court* case that the Board in exercising its discretion is guided by whether or not prejudice has been caused to the objectors. Having regard to the available evidence, the Board is unable to conclude that there is any prejudice caused to the objectors. In this instant case, the SPs were provided with the information so

as to be able to decide whether or not to object to the sale and they had filed their objections on time to the STB. As a matter of fact, the Board has also granted the Respondents extension of time to file further objections. Thus the Board is satisfied that there is no prejudice caused to the Respondents. For the reasons given above, the Board dismissed the preliminary issue with costs.

The application for collective sale order

26. The Board shall now deal with the application and the objections raised by the Respondents. The Board has broadly classified the main issues into 4 headings, namely;

(a) Transaction not in good faith under section 84A(9) of the LTSA:

  (i) non-consultation with the SPs in the appointment of the legal firm and marketing agent; and

  (ii) collective sale should be by way of public tender instead of EOI. EOI exercise was not conducted in a transparent manner, thereby giving rise to suspicion of collusion between the SC and the purchaser, and impropriety.

(b) Non-compliance with the schedule under section 84A(1) and section 84A(3) of the LTSA:

  (i) irregularities in obtaining signatures from the SPs to form part of the 80% requirement before the commencement date of the CSA; and

  (ii) insufficient notice given to the SPs for purpose of considering the collective sale and related matters.

(c) The SPA is invalid as it was not signed by the authorised representatives of the SC; and

(d) Valuation report is biased, inaccurate and not relevant.

(A) Transaction not in Good Faith under Section 84A(9) of the LTSA

(i) Non Consultation with the SPs in the Appointment of the Legal Firm and Marketing Agent.

27. The Respondents alleged that at the 1st general meeting of the SPs at Rainbow Gardens, held on 6 January 2007, the SPs were informed that a SC had been formed and were working on a collective sale together with a marketing agent (ERA) and a legal firm (KK Yap Lawhub LLC). At the 2nd meeting, they were informed of the appointment of M/s Rajah & Tann as their solicitors and ERA as their marketing agent without prior consultation. The Respondents further contended that the legal fees charged by M/s Rajah & Tann were not the lowest.

28. The Applicants submitted that the SC preferred to work with solicitors who had more experience in handling collective sale transaction instead of KK Yap Lawhub LLC although the latter was originally involved in the preparation for a collective sale of the development. Hence, the SC invited M/s Rodyk & Davidson, M/s Phang & Co and M/s Rajah & Tann to submit fee quotations for engagement as the solicitors for the collective sale of the development. M/s Rodyk & Davidson and M/s Rajah & Tann each quoted a professional fee of 0.25% of the price contracted

with the purchaser whilst M/s Phang & Co quoted at a rate of 0.24%. M/s Rajah & Tann's professional fee was subsequently reduced to 0.22%.

29. The SC also requested for fee quotations for marketing agent namely:- M/s CB Richard Ellis Pte Ltd ("CBRE"), M/s First Tree Properties Pte Ltd ("First Tree"), M/s Credo Real Estate (Singapore) Pte Ltd ("Credo"), M/s ERA Realty Networks Pte Ltd ("ERA"). In response to the fee quotations, ERA quoted the lowest at the rate of 0.60% of the sale price, with CBRE and First Tree charging a rate of 0.70% and Credo charging a rate of 0.80% of the same.

30. The Applicants averred that one Mr Ang Chin Peng of M/s Ang & Lee Advocates & Solictors, the then SC member, after having the opportunity of previewing all the other quotations, also put in his own fee quotation to act as the solicitor for the collective sale, undercutting all other bids of professional costs. They further contended that a SPs' meeting was held on 31 March 2007 and attended by over 57% of the SPs (being 37 out of 64 SPs). Dr Tan Kok Yang, the 5th Respondent was also present. The fee structure of M/s Rajah & Tann and ERA were discussed. A question and answer session was also conducted but no objection was raised then in relation to the appointments of M/s Rajah & Tann and ERA.

31. In the *Phoenix Court* case, Ang J held that the onus of proof that the transaction is not in good faith rests with the objecting Respondents. Based on the evidence available, the Board is of the view that the Respondents have not discharged the burden of proof that the appointments of the legal firm and marketing agent were not made in good faith. Furthermore, there was no evidence of collusion. In fact, none of the majority owners had come forward to testify to that effect. The Board also notes that more than 80% of the SPs had signed the CSA. By signing the CSA, they had accepted the appointments of M/s Rajah & Tann and ERA. Accordingly, the objection of the Respondents is dismissed by the Board.

(ii) Collective Sale should be by way of Public Tender instead of EOI. EOI not conducted in a Transparent Manner, thereby giving rise to suspicion of collusion between the SC and the Purchaser, and impropriety

Chronology of Events leading to Conducting the Collective Sale by EOI

32. On 31 March 2007, a SPs' meeting was held and attended by over 57% of the SPs (being 37 out of 64 SPs). Dr Tan Kok Yang, the 5th Respondent was also present. At the meeting, the SC explained the benefits and the rationale for choosing to conduct the collective sale by way of EOI. M/s Rajah & Tann then elaborated on the steps that would be taken in an EOI exercise. No objections were raised during the question and answer session.

33. One of the SPs, Dr Poon Lee Kwee ("Dr Poon") announced at the meeting that he had obtained an offer that was above the minimum selling price ("MSP"). He then handed over a sealed envelope to M/s Rajah & Tann for safekeeping, to be opened together with the other offers received at the closing of the EOI exercise on 18 April 2007. This sealed envelope was subsequently revealed to be a letter dated 31 March 2007 from M/s Seah Ong & Partners, representing a potential purchaser, making an offer of S$73.3million.

34. To make the process transparent, all the SPs of the development were invited by letters to witness the opening of the sealed envelopes and the results of the EOI on 18 April 2007 at the office of M/s Rajah & Tann.

35. On the appointed day, a representative of M/s Seah Ong & Partners placed into the EOI tender box another sealed envelope. Sim Lian Land Pte Ltd ("Sim Lian"), Ecco Venture Pte Ltd ("Ecco") and First Capital Holdings Pte Ltd ("First Capital") (a member of GuccoLand Group) also placed their respective letters into the EOI tender box. Before opening the sealed envelopes, Dr Poon requested to retrieve the earlier envelope, which he had submitted on behalf of M/s Seah Ong & Partners, as it has been superseded. The envelope was identified and returned, thus leaving effectively 4 envelopes to be opened. Before returning the earlier envelope to Dr Poon, the SC Chairman Mr Richard Goh, asked whether anyone had any objection to the return of the envelope. As there was no objection raised by the SPs (including the 1st and 5th Respondents) who attended the opening, the envelope was returned.

36. At the opening of the 4 sealed envelopes, the offer from M/s Seah Ong & Partners' client, Premier Land Development ("the Purchaser") was the highest at S$76.8million or S$86.8million if approval to purchase two parcels of state land can be obtained (which superseded their previous offer of S$73.3million). The 2nd higher bid of S$73.6million came from First Capital, followed by Ecco at S$64million and Sim Lian at S$60.5million.

37. Evidence was adduced that Ecco had earlier indicated that they might consider matching or improving their offer if there are other genuine offers from other developers. According to Ms See Beng Kiang ("Ms See") of ERA, she had contacted Ecco to inform them of the higher offer from the Purchaser and to inquire whether Ecco would like to consider improving its offer. However Ecco decided not to make any further offer after learning of the highest bid from Ms See. It is Ms See's testimony that she had also contacted Sim Lian and First Capital to inquire if they would like to consider improving their offers. They declined. In the same evening, another meeting was held where the SC shared the results of the EOI exercise with the SPs who were unable to witness the EOI opening.

38. The Respondents further alleged that the SPs were initially given the impression by the SC that the collective sale would be conducted by way of a public tender. It was subsequently changed to that of an EOI without consulting the SPs.

39. The evidence shows that all the SPs had been notified that the collective sale would be conducted by way of an EOI exercise. They knew of the advantages and the reasons why EOI had been adopted, by way of letters dated 18 March and 20 March 2007 and at the SPs' meeting held on 31 March 2007. None of the SPs who signed the CSA had objected to the SC's decision to conduct the collective sale by way of an EOI exercise.

40. It is relevant to note that clause 14(a) of the CSA provides that "the sale shall be carried out by way of tender or any other mode as decided by the SC in consultation with the property consultants and the solicitors". In this instant case, the SC had decided to conduct the collective sale by way of an EOI and all the SPs had been informed of it without objection. In any event, the SPs

still have the discretion to decide whether or not to accept the best offer obtained by way of an EOI, or to proceed by way of a public tender. As the SC and the majority of the SPs have decided to accept the best offer obtained by way of an EOI exercise, there is no valid reason for the Respondents to object to it. Accordingly, the Board dismisses this ground of objection.

41. In any event, the Board notes that the EOI exercise was properly publicised and sufficiently exposed to the market for the best possible price to be achieved. Four bids were received, and the highest was S$76.8million (on an "as is" basis) or S$86.8million (if approval to purchase two parcels of adjoining state land can be obtained). The second highest bid was S$73.6million. The Board is of the view that there is therefore no evidence of bad faith.

Whether SC and the Solicitor should allow Dr Poon to retrieve the earlier envelope

42. The Respondents alleged that at the opening of the tender box exercise on 18 April 2007, there were 5 bids received. The SC should not have allowed Dr Poon to retrieve the earlier envelope which he had submitted on behalf of M/s Seah Ong & Partners. The withdrawn bid was not disclosed and no explanation was given to clarify the unusual event that had transpired to ensure transparency in the EOI exercise.

43. The Applicants' 1st witness, Seah Seow Kang Steven ("AW1"), a partner of M/s Seah Ong & Partners, testified that by way of a letter dated 31 March 2007 addressed to the SC of the development on behalf of their client, his firm expressed a keen interest to purchase the property at an offer price of S$73.3million subject to contract. This was placed in a sealed envelope and receipt of which was acknowledged by the vendors' solicitors (see SSK "1"). Subsequently, the firm was instructed by their client to submit a higher offer for the development. Hence, his firm prepared another EOI by way of a letter dated 18 April 2007 on behalf of their client ("the 2nd offer") expressing the interest to purchase the development at S$76.8million or alternatively S$86.8million if the competent authority approves the purchase of 2 parcels of state land next to the development (see SSK "2"). The said letter was to replace the earlier one sent on 31 March 2007. None of the Respondents had questioned AW1in allowing Dr Poon to retrieve the earlier envelope.

44. The evidence of the Applicants' 8th witness, Gan Hiang Chye ("AW8"), senior partner of M/s Rajah & Tann is that one Dr Poon announced in a SPs' meeting on 31 March 2007 that he had obtained an offer that was above the MSP. Dr Poon then handed the sealed envelope to AW8 for safe keeping and to be opened together with the other offers received at the closing of the EOI exercise on 18 April 2007.

45. At about 3.10pm on 18 April 2007 when there were no further bids forthcoming, AW8 personally took the box to the SPs' meeting at the auditorium on the 17th floor of Bank of China Building (part of M/s Rajah & Tann's office premises). At the auditorium, SC Chairman, Richard Goh, opened the meeting. AW8 was asked to open the box in the present of the SPs. When the box was opened, there were 5 sealed envelopes in the box. Dr Poon requested to retrieve the earlier envelope he had submitted on behalf of M/s Seah Ong & Partners as it had been superseded. As AW8 was able to identify the sealed envelope, he picked out the earlier envelope and showed it to all present. All were asked whether they had any objection to the return of the earlier envelope and no

one objected, including the 1st and 5th Respondents who were present. The earlier envelope was hence returned. AW8 was cross-examined:-

Q: Were you surprised when Dr Poon asked for permission to retrieve the earlier envelope?

A: No. I have no qualms about it because he was the one who tendered the bid. He gave the earlier envelope to me and he now wants it back. I agree as it is not a binding contract.

Q: How did you identify the earlier envelope?

A: I can recognize the earlier envelope. The 2nd envelope was very much bigger. I handed the earlier envelope to Dr Poon in the presence of the owners and before opening other bids.

46. Out of the 4 bids, the highest bid came from the Purchaser, through his solicitors M/s Seah Ong & Partners, at S$76.8million or S$86.8million if approval to purchase 2 parcels of state land can be obtained. The bid is higher than their earlier offer of S$73.3million for which the envelope was retrieved.

47. The Applicants submitted that in law EOI are "invitations to treat" and do not constitute an offer. They do not have any legal effect whatsoever. Even offers can be withdrawn unilaterally before acceptance. There is no consideration to keep it open. Hence there is nothing wrong for the SC to allow an earlier EOI bid to be withdrawn when it was expressly requested by the same person who had submitted the envelope. As, in law, an EOI can be withdrawn at any time before acceptance, the SC cannot be faulted for not having acted in good faith as they had adhered to the correct legal position.

48. The Board accepted the submission by the Applicants. In its opinion, an EOI is an invitation to treat. It becomes a binding contract upon acceptance of the bid by the SC. Prior to the opening of the envelopes, the Board is of the opinion that Dr Poon has the right to retrieve it. In this case, Dr Poon sought permission from the SC Chairman to retrieve the sealed envelope in the presence of the other SPs and there was no objection from the SPs. In any event, the earlier offer was S$73.3million which is lower than the later bid from the Purchaser at S$76.8million or S$86.8million if the purchase of 2 parcels of state land can be obtained.

49. From the evidence adduced and the submission put forward by the Applicants, the Board is satisfied that there was nothing wrong in allowing Dr Poon to retrieve the earlier envelope as there was no evidence of collusion. Further there was no prejudice caused to the objectors. In any case, the withdrawn bid is a mere expression of interest. It does not have any legal effect or binding on the interested purchaser. On the authority of the *Phoenix Court* case as referred to in paragraphs 23 to 25, the Board dismisses objections (a)(i) and (ii).

(B) Non-compliance with The Schedule under sections 84A(1) and 84A(3) of the LTSA

(i) Irregularities in obtaining signatures from the SPs.

50. The Respondents alleged irregularities in obtaining signatures from 11 SPs to form part of the 80% requirement before the commencement date of the CSA. However, the Applicants argued

that the Respondents' allegations were baseless. They maintained that it is common practice in the industry for SPs who are agreeable to the terms of a CSA to sign it before the meeting held on 31 March 2007 if they are confident of the terms and do not require any explanation.

51. The Board has carefully considered the arguments put forth by the Applicants and the Respondents. There is no evidence of bad faith, deceit or coercion forcing those 11 SPs to sign the CSA before the said meeting. The Board is of the opinion that there is nothing wrong if those 11 SPs chose to sign the CSA before the meeting so long as they understood and agreed to be bound by the terms of the CSA.

52. The 5th Respondent, Dr Tan Kok Yang, alleged that the number of SPs with at least 80% share value was not achieved at the time of the EOI closing because 3 of the SPs who signed the CSA had imposed additional conditions which is in breach of the CSA.

53. The Applicants however submitted that the Respondents had not signed the CSA, and as such they had no right to raise any breach of the CSA. They relied on the decision of *Thevathasan Gnanasundram v Khaw Seng Ghee* [2000] SGSTB 4, where the Board said:-

> *"Only signatories to the collective sale agreement have a cause of action for a breach thereof. Contractual rights are, in any event, not a factor that the Board can take into account for the purposes of determining good faith under section 84A(9)."*

54. This Board sees no reason to deviate from the decision cited by the Applicants. This is not an issue for the Board to take into account. What the Board has to be satisfied with is whether the consent of SPs having at least 80% of the share value was obtained when the application was made before the Board. As the application had fulfilled all the requirements, the objection is accordingly dismissed.

(ii) Insufficient notice given to the SPs for purpose of considering the collective sale and related matters

55. The Respondents averred that there was insufficient notice given to the SPs for the purpose of considering the collective sale and related matters. The Applicants rebutted by submitting that there was no evidence of insufficient notice given to the SPs for purpose of considering the collective sale and related matters. None of the Respondents was able to produce evidence to substantiate the allegations.

56. From the evidence adduced, the Board finds the Respondents' submissions devoid of merit. Accordingly objections (b) (i) and (ii) are dismissed.

(C) The SPA is invalid as it was not signed by the authorized representatives of the SC

57. The Respondents alleged that the SPA is invalid as it was signed by only 4 members of the SC, instead of 5. In addition, only 2 of the 4 members that signed are the authorised representatives.

58. The Applicants submitted that there is no basis for such an allegation. The SPA is with the purchaser and the majority SPs supporting the sale. It is not for the Respondents to challenge the SPA as they are not parties to it. The 3rd authorised representative was overseas at the material time. Furthermore, the CSA clearly provides that the SC makes decisions based on majority rule. They submitted that the 3rd authorised representative is the Chairman of the SC. Upon his return from abroad, he has ratified the SPA.

59. The Board holds that there is nothing wrong with the SPA. Neither the Purchaser nor the majority SPs have challenged the validity of the SPA. It is binding on the parties. Accordingly, the Board dismisses objection (c).

(D) Valuation report is biased, inaccurate and not relevant

60. Under cross examination, the valuer, Mr Daniel Ee, explained that he used two principal methods – the Sales Comparison and Residual Land Value ("RLV") method. In the course of the proceedings, the Respondents raised four questions relating to the valuation.

(i) The Bukit Timah MRT line was omitted as a factor

61. When queried by the Respondents, the valuer admitted that even though the marketing materials (including the advertisement) employed by the property agent, ERA, explicitly mentioned the future MRT line, he did not take that into account in the valuation because the expected date of completion in 2015 as reported in the press is too remote in the future. Furthermore, the exact location of the station was unknown at the material time and hence, there is no certainty that the station will be of any tangible benefit to the Rainbow Gardens site. The Board accepts the argument that it is impracticable given the lack of details to consider the presence of the proposed MRT in the valuation.

(ii) The alienation of the state land was ignored

62. The Respondents also argued that by ignoring the alienation of the state land, the valuation is flawed. The Board rejects this line of reasoning and agrees with the valuer that this was not contemplated by him because the client did not so instruct him.

(iii) Inappropriate selection of comparables and adjustments

63. The Respondents questioned the suitability of Regent Gardens cited by the valuer as a land sale comparable on the grounds that the collective sale application was rejected by the STB because the valuation was below the market rate. The valuer conceded this but added, when he was recalled to the witness stand, that the valuation issue in the Regent Gardens case, as he understood it was related to the development charge ("DC") calculation. In any event, the valuer did not cite Regent Gardens as the sole piece of transactional evidence in his valuation. He also relied on two other comparable land sales – HJ Heights and Hong Leong Gardens. Indeed, HJ Heights, by virtue of its proximity to the subject property, can justifiably be deemed a better comparable than the other two. Even granting that reliance on the Regent Gardens sale was erroneous, the Board takes the view that it does not negate the comparable approach used by the valuer in the present case.

64. The Respondents also pointed out what they considered to be an anomaly that implied that the sale price was not obtained in good faith. The sale price of individual units in an adjoining project, Signature Park, at the material time was $650 to $850 psf, or an average of $750 psf. This was higher than the sales proceeds of the subject property over the strata area of a typical unit at Rainbow Gardens which amounted to roughly $650 psf.

65. Although this is a subtle and clever argument, in the Board's view, it is erroneous. While the Respondents may justifiably feel aggrieved at this outcome from such a perspective of the matter, there is no merit in concluding from this observation alone that the sale price was not obtained in good faith. The Board accepts the valuer's explanation that the two numbers are not comparable at all. The $750 psf for Signature Park was the price of a unit in a completed and much newer condominium project with full facilities that was not the subject of a collective sale, while $650 psf was the en bloc sales proceeds measured over the strata area of Rainbow Gardens. Put differently, the price of a Signature Park unit comprises a share of both land and building, while the Rainbow Gardens sale price comprises only land (including alienated state land) since the structures will be demolished by the developer. Accordingly, the Board rejects the Respondents' argument.

66. The Respondents also queried the valuer on the adjustments made in arriving at the valuation using the comparable method. It is regrettable that the adjustments were not disclosed at all in the valuation report until he was being cross examined. In defence, he cited the common statement that valuation is an art as much as a science, and that he was therefore relying on his extensive experience to make the subjective adjustments to the comparables. But at the same time, the Respondents have also not sought professional advice to challenge the Applicants' valuation. In the absence of a separate valuation from the Respondents, and based on available evidence before the Board, the Board accepts the valuer's evidence that the adjustments are not unreasonable.

(iv) The Residual Land Valuation ("RLV") Method

67. The Respondents queried the valuer's RLV calculation. Following the line of reasoning in using land comparables from district 5 and 21, the Respondents suggested that the valuer had failed to consider the evidence from 2 projects – Garden Vista (dist 21) & One North Residences (dist 5) – being marketed around the same time. Both are almost equidistant to the subject property. Both are on 99-year leasehold land. However, data obtained from the Urban Redevelopment Authority's website showed that the sale prices for these units were in excess of than $1000 psf. This is higher than the $850 psf assumed by the valuer in the RLV for the completed units to be built on the Rainbow Gardens site and which, in turn, is used to compute what is known as the gross development value ("GDV"). Based on calculations by the Respondents, assuming they are correct, the land price should be $85million ($514 psf ppr) rather than $66.9million ($400 psf ppr) arrived at by the valuer.

68. The Board does not agree with the Respondents' argument. Firstly, the comparables cited were as at June 2007, which is close to, but after the material date of valuation. The selection of comparables cannot be done with the benefit of hindsight. Secondly, we take cognizance of the valuer's response that the Respondents could only cite a total of 3 comparables. The valuer produced evidence of other transactions in the same 2 projects – Garden Vista and One North Residences – which were transacted from Jan to May 2007. They showed that the sale prices were $896 psf and $794 psf respectively. After making adjustments, he concluded that the $850 psf used

in the RLV is still supportable. The Board is of the view that the valuer's basis for his RLV calculation is not unreasonable and the Respondents have failed to prove that the RLV calculation is wrong. Accordingly, the Board dismisses objection (d).

Decision

69. For the above reasons and taking cognizance that the intention of the collective sale legislation is to facilitate rather than to place obstacles in the way of the collective sale and the decision of the Court of Appeal in the *Phoenix Court* case, the Board is satisfied that none of the objectors has suffered any prejudice. There is also no evidence of bad faith or collusion in the collective sale process. Accordingly, the Board dismisses all the objections and approves the application for an order for the collective sale of Rainbow Gardens.

Costs

70. The Board has read the submissions by the Applicants and Respondents on costs. After due consideration, the Board is of the opinion that the objections raised by the Respondents are not frivolous or groundless. Some of the issues raised pertaining to technical non compliance with the LTSA and BMSMR merited consideration notwithstanding that they were not upheld by the Board. The Board therefore makes no order as to costs.

ORDER BY THE STRATA TITLES BOARD

71. **PURSUANT** to Section 84A(7) of the Land Titles (Strata) Act and on the basis of facts available to the Board, the Board not being satisfied that:-

(1) the transaction is not in good faith after taking into account only the following factors:-

(i) the sale price for the lots and the common property in the Strata Title Plan No. 1175;
(ii) the method of distributing the sale proceeds; and
(iii) the relationship of the purchaser to any of the subsidiary proprietors;

(2) the sale and purchase agreement would require the subsidiary proprietors who have not agreed in writing to the sale to be a party to any arrangement for the development of the lots and the common property in the Strata Title Plan No. 1175;

the Board hereby approves the application and orders:-

(1) That all the units in the development known as **Rainbow Gardens** (Strata Title Plan No. 1175) comprised in Land Lot **Nos 4636A of Mukim 5** be sold collectively to **Premier Land Development Pte Ltd** (the "Purchaser") under the terms and conditions as agreed in the Sale and Purchase Agreement dated 12th day of May 2007;

(2) That all subsidiary proprietors including those who have not signed the Collective Sale Agreement ("the minority owners") be bound by and comply with the terms and conditions of the Collective Sale Agreement dated 30th day of March 2007 and the Sale and Purchase Agreement dated 12th day of May 2007 as if they are parties thereto;

(3) That all the subsidiary proprietors of the development including those minority owners do forthwith: -

(i) execute sign seal and deliver and perfect all acts and deeds and deliver unto the purchaser conveyances, assignments, surrenders, releases, transfers, deeds, instruments, deeds of variation or such other assurances;

(ii) execute and furnish to the Purchaser or other relevant parties such Statutory Declaration(s) as are required by the Inland Revenue Authority of Singapore or the Purchaser; and

(iii) do all acts, things and sign and execute all documents as may be necessary or expedient for the purposes of effecting or perfecting the collective sale.

(4) That all costs and disbursements (including the majority owners' solicitors' costs), fees and disbursements of and in connection with this application be borne by all the subsidiary proprietors (including the minority owners) in accordance with the terms of the Collective Sale Agreement dated 30th day of March 2007.

Dated this 18th day of April 2008

MR TAN LIAN KER
President
Strata Titles Boards

MR SENG KWAN BOON
Member
Strata Titles Boards

MR TAY KAH POH
Member
Strata Titles Boards

MR CHNG BENG GUAN
Member
Strata Titles Boards

MR TAN TUCK KIM
Member
Strata Titles Boards