

## Late delivery payment begins from booking fee collection, says court

Written by admin3

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PUTRAJAYA: The calculation for late delivery payment to house buyers begins from the date the booking fee is paid, and not when the sale and purchase agreement (SPA) is signed, the Federal Court ruled today.

Chief Justice Tengku Maimun Tuan Mat said the Housing Development (Control & Licensing) 1966 and its subsidiary laws were social legislation and that was a settled law.

In a dispute brought before the court, the developers contended that the scheduled contracts must be read literally and in accordance with the intention of parties.

It is our view that the submission is untenable. When it comes to interpreting social legislation, the courts must give effect to the intention of Parliament and not the intention of parties, Tengku Maimun said.

Otherwise, the attempt by the legislature to level the playing field by mitigating the inequality of bargaining power would be rendered nugatory and illusory, she said in the judgment to allow seven appeals by purchasers.

The purchasers, from Melaka and Kuala Lumpur, had hauled the developers PJD Regency Sdn Bhd, GJH Avenue Sdn Bhd and Sri Damansara Sdn Bhd before the housing tribunal over the payment of the liquidated ascertained damages.

Tengku Maimun said the courts would not countenance the bypassing of statutory safeguards meant to protect the purchasers.

While the developers might think that it is a standard commercial practice to accept booking fees, the development of the law clearly suggests to the contrary, she said adding that the courts would not condone such a practice until the law said otherwise.

The court said the LAD payable by housing developers to purchasers for late delivery of vacant possession in a housing project begins when the booking fee is collected and not when the SPA is signed between the developer and purchaser.

Other judges in the five-member bench were Nallini Pathmanathan, Abdul Rahman Sebli, Zabariah Yusof and Mary Lim Thiam Suan. The unanimous verdict was delivered through a virtual proceeding following the enforcement of the movement control order since last week.

In one of the cases, purchaser Wong Kien Choon bought a property from PJD Regency in Kuala Lumpur at RM501,800 and paid RM10,000 as commitment fee (booking fee) on Jan 16, 2013.

The SPA was signed on March 21, 2013 and the contract stated that vacant possession must be delivered

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within 42 months or by September 2016. However, the developer only informed Wong to collect keys to his house on Jan 23, 2017.

Wong asked the developer to pay him RM33,000 in LAD but the developer disputed the amount.

The matter was referred to the housing tribunal which ruled in favour of Wong. PJD's appeal to the High Court and Court of Appeal were also dismissed.

Lawyers Andy KL Wong and Rex RS Wong appeared for Wong and buyer Ng Chee Kuan. Meanwhile, counsel Koh Kean Kang and Viola D Cruz held watching brief for the National House Buyers Association (HBA).

HBA secretary-general Chang Kim Loong said it was a landmark ruling and another victory for house buyers.

He urged the housing and local government ministry to put to rest the issue and to enforce laws and regulations that prohibited developers, estate agents, lawyers or any third party purportedly acting for developers to collect booking fees.

There has not been any reports of prosecution for this blatant defiance of the law, he said.

Real Estate Lawyers Association president Pretam Singh said today's ruling had brought some clarity to the law.

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