

Housing Developers Breathe a Sigh of Relief – The *Alvin Leong* Saga

It is safe to say that the COVID-ridden years have not been too kind on housing developers in Malaysia. Not only are they forced to manage the uncertainty and unprecedented difficulty caused by the virus, but recent decisions from our superior Courts have also seemingly added salt into their wounds.

In 2020, the Federal Court in the case of **Ang Ming Lee**¹ held that the Controller of Housing (“**Controller**”) is not empowered to grant extension of time for the delivery of Vacant Possession (“**VP**”). In early 2021, the Federal Court in the case of **PJD Regency Sdn Bhd**² held that the date for calculation of liquidated damages (“**LAD**”) begins from the date of payment of the booking fee, not the date of the sale and purchase agreement.

However, all is not lost. In a decision delivered on 29 July 2021, the Court of Appeal held, among others, that whilst the Controller is not empowered grant an extension of time, this does not oust said power from being exercised by the Minister of Urban Wellbeing, Housing and Local Government (“**Minister**”).

Brief Facts

The Alvin Leong and other purchasers (“**Purchasers**”) entered into Schedule H, statutory sale and purchase agreements (“**SPAs**”), for several service apartments (“**Parcels**”) with the Developer. The SPAs provide that VP of the Parcels shall be delivered to the Purchasers within 42 calendar months from the date of the SPAs.³

Subsequently, the Developer sought for a further extension from the Controller to extend the time for delivery of VP to 59 months. The Controller partially allowed the Developer’s request to a period of 54 months. Dissatisfied with the Controller’s decision, the Developer appealed to the Minister⁴ whom allowed the Developer’s appeal (i.e. extending the time for delivery of VP to 59 months).

Dissatisfied with the decision of the Minister, the Purchasers filed judicial review applications seeking to, among others, quash the decision of the Minister.

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¹ *Ang Ming Lee & Ors v Menteri Kesejahteraan Bandar, Perumahan dan Kerajaan Tempatan & Anor and other appeals* [2020] 1 MLJ 281. Also see: [Apex court finds controller of housing's powers to waive or modify provisions of statutory contract invalid](#)

² *PJD Regency Sdn Bhd v Tribunal Tuntutan Pembeli Rumah & Anor and other appeals* [2021] 2 MLJ 60. Also see: [Housing Developers Beware – Federal Court Upholds Faber Union; Housing Developers Beware – The Aftermath of PJD Regency Sdn Bhd v Tribunal Tuntutan Pembeli Rumah & Anor](#)

³ Note that Clause 25 of Schedule H originally provides that VP shall be delivered within 36 months from the date of the SPA. The reason for this discrepancy in this case (i.e. from 36 months extended to 42 months) is that the housing developer in this case had requested for a prior extension.

⁴ Regulation 12 of the HDR allows any person aggrieved by the decision of the Controller to appeal to the Minister.

High Court's Decision

The High Court⁵ allowed the Purchasers' judicial review applications and quashed the decision of the Minister. In so doing, the learned High Court Judge held, among others:

- (1) that his Lordship was bound by the decision of **Ang Ming Lee** (i.e. that Regulation 11(3) of the **HDR** which delegates the Minister's power to grant extensions of time to the Controller) was invalid and *ultra vires* the HDA. Accordingly, the Controller could not invoke Regulation 11(3) of the **HDR** to waive or modify the 36 month statutorily prescribed time for delivery of VP;
- (2) nothing in the HDR empowered the Minister to extend the time for delivery of VP. As such, there was no lawful basis for the Minister to make the decision (i.e. to extend the time for delivery of VP to 59 months);
- (3) even assuming the Minister had the power to grant the extension, the Purchasers should have been accorded a right to be heard before the Minister made his decision.

Court of Appeal's Decision

The Court of Appeal held that whilst the Controller does not have the power to grant an extension of time, the same cannot be said about the Minister. Section 24 of the **HDA** is wide enough to clothe the Minister with this power.

In fact, the Court of Appeal through Justice Lee Swee Seng in the previous case of **Loh Tina**⁶ alludes to the proposition that the power to grant an extension of time may fall within the ambit of the Minister's power.

Stay tuned for an in-depth discussion of the Court of Appeal's Grounds of Judgment on the *Alvin Leong* saga.

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DISCLAIMER:

This article is for general information only and should not be relied upon as legal advice.
The position stated herein is as at the date of publication on 30 July 2021.

⁵ *Alvin Leong Wai Kuan & Ors v Menteri Kesejahteraan Bandar, Perumahan dan Kerajaan Tempatan and other applications* [2020] 10 MLJ 689.
⁶ *Loh Tina & Ors v Kemuning Setia Sdn Bhd & Ors and another appeal* [2020] 6 MLJ 191.