Sick Housing Project at Serene Heights Bangi: Facts, Issues, Challenges & Prospects

Professor Dr Nuarrual Hilal Md Dahlan
ACIS (CS)(CGP), CC
School of Law
Universiti Utara Malaysia
Introduction

Developer: Symphony Hills Sdn Bhd

Land Proprietor: UEM Land Berhad

Solicitor: Messrs Othman Hashim & Co

Local Authority: Majlis Perbandaran Kajang (MPKj)

Architect: NR Architect, Sri Hartamas, Kuala Lumpur

KPKT: Licence No. 11186-7/06-2019/0418(L)
Sale & Purchase Agreement – important terms

- Date of S&P Agreement
- Date of the delivery of Vacant Possession
- Extension of Time
- Late Delivery Damages (LAD)
- Recession of Contract
Date of S&P Agreement

- 21 July 2017
- 30 September 2016 (Dahlia)
Date of the delivery of Vacant Possession

- Clause 24: Time for Delivery of the Vacant Possession

Clause 24(1): 'VP of the said Property shall be delivered to the Purchasers...36 months from the date of this agreement'

Issues:

1) Why not 24 months? (original Schedule G: land property)

2) JPN letter dated 13 June 2017 stated 36 months. Whether this extension valid?

3) ‘sekitanya terdapat penjualan unit berkaitan pemajuan ini sebelum atau pada tarikh kelulusan ini dibuat, maka kelulusan ini adalah terbatal’

4) Whether Controller can extend the time for delivery of VP vide letter dated 13 June 2017 valid?
Extension of Time 1

JPN letter dated 13 June 2017 stated 36 months.
The late date for the delivery of VP should be on 20 July 2020, if the S&P is dated 21 July 2017 (36 months = 3 years)

**Issues:**

1) JPN letter dated 13 June 2017 stated 36 months. Whether this extension valid?

2) ‘sekitanya terdapat penjualan unit berkaitan pemajuan ini sebelum atau pada tarikh kelulusan ini dibuat, maka kelulusan ini adalah terbatal’

3) Whether Controller can extend the time for delivery of VP vide letter dated 13 June 2017, valid?
Extension of Time 2

Letter from Developer dated 11 December 2020 – extension of time to delivery the VP for 167 days for Dahlia Phase 1B1 from the date of the original deliver of VP (20 July 2020). Letter from JPN KPKT dated 25 November 2020.


Movement Control Order (MCO).

167 days extension means the last date for the VP will be 3 January 2021. But the last date under section 23 of the Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (COVID 19) Act 2020 is 31 December 2020.

Issue:
Whether Minister for Law has provided the extension?
Late Delivery Damages (LAD)

Clause 24(2):

‘If the Developer fails to deliver VP...in clause 26...the Developer shall be liable to pay to the Purchaser liquidated damages calculated from day to day at the rate of 10% per annum of the purchase price from the expiry of the period stipulated in subclause (1) until the date the Purchaser takes VP...’
Calculation of Late Delivery Damages

- Price of the house RM 788,800.
- Date of VP in S&P: 20 July 2020.
- Date of the actual VP: 31 December 2020.

Delay 164 days

RM 788,800 x 10% x 164 days divide by 365 day = RM 35,441.97
Recession of Contract (S&P)

- Default of the developer to deliver VP on time.
- Rescind the S&P
- Claim all costs incurred and moneys paid.
- Claim Late Delivery Damages (LAD) from the date of actual VP until termination date of the S&P.
Problems of Developer

- Insufficient funds?
- Does not comply with the requirements and conditions of the Local Authority (MPKj)?
- Certificate of Completion & Compliance (CCC)
- Does not comply with the requirements and conditions of the technical agencies – TNB, water authority, JAS, JKR, JPS, JMGS?
Grievances of purchasers

- Deprive of occupying the house on time
- Extra cost – rental
- Having to pay monthly installments to banks/financiers
- Uncertainty to get the VP and occupy the house
- Delay housing project
- Sick housing project
- Abandoned housing project