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Opinion

NZ landmark decision offers lessons for house buyer protection

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IT is a trite practice that after a company is wound up by the court, the affairs of the company are given to the liquidator, who plays a key role in the process.

The liquidator's responsibility is to gather all assets, properties and money of the liquidated company and distribute them fairly to the creditors and other entitled individuals, following the priority of payment principle as per Section 292(1) of the Companies Act 1965 (CA) (Act 125) (repealed) (now Section 527(1) of the Companies Act 2016 (Act 777)).

Regrettably, the list of priority payment-entitled persons does not include purchasers, who are often the victims in abandoned housing projects of liquidated developer companies.

There are also no adequate legal provisions to protect them in abandoned housing projects, which is a significant oversight in the current Malaysian legal system.

The list of debts for settlement by the liquidator, using the funds from the accumulated money, is as follows: (Section 292(1) of CA 1965 (Act 125) (repealed) and Section 527(1) of CA 2016 (Act 777)):



The costs and expenses involved in winding up.

All wages or salaries under any contract of employment or award agreement.

All amounts due in respect of the workers' compensation fund.

All remuneration payable to any employee in respect of vacation leave, etc.

All amounts due in respect of contributions relating to employees' superannuation, provident funds, or retirement benefits, which are approved schemes under federal laws relating to income tax.

The amount of all federal tax assessed.

After all the above-mentioned debts have been paid off, only the unsecured debts will then be ranked equally and settled. This means that they will be paid equally from the remaining surplus funds, if there is any (Section 292(1) CA 1965 (repealed) and Section 527(1) CA 2016).

In the case of abandoned housing projects, aggrieved purchasers are not included in the priority list for payments during liquidation. They may receive payment only if there is a surplus of money left after all other debts have been settled.

Examples of abandoned housing projects involving this type of aggrieved purchasers include Taman Desa Surada in Kajang, Selangor, Kondominium Esplanade in Klebang, Malacca, Taman Lingkaran Nur, Kajang Selangor and Taman Perdana Muar in Mukim Serong, Muar, Johor.

The above is the current state of law in Malaysia. Be that as it may, in a recent landmark case in New Zealand, the High Court decision, presided by Venning J., in *Maginness v Tiny Town Projects Ltd (in Liquidation)*, 2023) has had a significant impact on the principles of equity and fairness in liquidation administration.

The court's analysis of conflicting interests in an abandoned housing development project in Taranaki, North Island, New Zealand, led to a decision favouring the aggrieved victim purchasers.

This case sets a precedent in New Zealand and serves as a valuable lesson for the need for similar protections in liquidation administration legal frameworks, including in Malaysia.

In this case, the purchasers who have paid either the full or partial purchase price for houses are entitled to an equitable lien over the houses that they have paid and purchased from the vendor developer.

Pursuant to Section 23(b) of the Personal Property Securities Act 1999 (PPSA), the vendor developer cannot claim full ownership over the lien.

As a result, the fully completed or partially completed houses can only be included in the sale or disposal by the liquidator to settle the vendor developer's debts to creditors and other entitled parties, subject to such equitable lien, in the liquidation administration.

In this case, even after the vendor developer company's liquidation, the house titles have still not been transferred to the purchasers.

Therefore, the houses still belong to the liquidated vendor developer company because the Code Compliance Certificate (CCC), as required under Section 53 of the PPSA, has not been obtained.

Nevertheless, the court has ruled that the vendor developer company's ownership is subject to the purchasers' equitable lien over the houses.

This means that if the completed or partially completed houses have been sold to a third party, the proceeds from the sales are subject to the equitable lien, and the proceeds received must be paid to the purchasers, along with any other damages the purchasers may have claimed as legal and equitable relief for the breach of contract of the defaulting vendor developer company.

The writer suggests that it is timely that Malaysia's liquidation law needs to be revised and improved to address the above-mentioned issue. This can be achieved by incorporating provisions of equity and principles of fairness to provide better protection for the rights of aggrieved purchasers when the vendor developer company is undergoing liquidation administration.

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