

DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR
DALAM WILAYAH PERSEKUTUAN, MALAYSIA
BAHAGIAN SIVIL
NO. GUAMAN SIVIL : WA-22NCVC-674-10/2021

ANTARA

1. RAJOO A/L PARIASAMY
(NO. K/P: 830905-05-5413)
2. NOEL YEO LIP SIN
(NO. K/P: 660104-13-5633)
3. ANDREW TAN MEN XIAN
(NO. K/P: 900313-14-6021)
4. TAN TEOW ANN
(NO. K/P: 570414-08-5521)
5. TEO HOCK CHOON
(NO. PASPORT : E2260225H)
6. TEO WEI ZHEN, RYAN
(NO. PASPORT : E2278272H)
7. YONG KWA SIEW
(NO. K/P: 641028-10-7054) ...PLAINTIF-PLAINTIF

DAN

PREMA BONANZA SDN BHD
(NO. SYARIKAT : 200601036174 / 755933-K) ...DEFENDAN

JUDGMENT

Introduction

1. The Plaintiffs applied for a summary judgement under Order 14 of the Rules of Court 2012 ("the Rules") for their claim against the Defendant as well as applied to strike out the Defendant's



counterclaim under Order 19 Rule 19 of the Rules. The Defendant on the other hand applied to strike out the Plaintiffs' claim under Order 18 Rule 19 of the Rules.

2. As all the issues to be determined are the same the Court decided to dispose of all this 3 applications together.
3. For ease of reference the Order 14(1) and Order 18 Rule 19 of the Rules are reproduced here and are as follows:

Order14

(1) Where in an action to which this rule applies a statement of claim has been served on a defendant and that defendant has entered an appearance in the action, the plaintiff may, on the ground that the defendant has no defence to a claim included in the writ, or to a particular part of such a claim, or has no defence to such a claim or part thereof except as to the amount of any damages claimed, apply to the Court for judgment against that defendant.

4. **19. Striking out pleadings and endorsements (O. 18 r. 19)**

(1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the endorsement, of any writ in the action, or anything in any pleading or in the endorsement, on the ground that-

(a) it discloses no reasonable cause of action or defence, as the case may be;

(b) it is scandalous, frivolous or vexatious;

(c) it may prejudice, embarrass or delay the fair trial of the action; or

(d) it is otherwise an abuse of the process of the Court, and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

(2) No evidence shall be admissible on an application under subparagraph (1)(a).



Brief Facts

5. All the Plaintiffs are purchasers of residential apartments at the Sentral Residences (“the apartments”) developed by the Defendant and had entered into sale and purchase agreements with the Defendant at various dates in 2012 and 2013.
6. The Plaintiffs claim is for liquidated damages for late delivery of vacant possession calculated from the date of the booking fees applying the law which allows completion period for residential properties within a period of 36 months from the date of the booking fees.
7. The Defendant contends that it was given an approval by the Housing Ministry to extend the time of completion from 36 months to 54 months.
8. In the alternative the Defendant contends that if any late payment was due it was subject to the discounts given by the Defendant to the Plaintiffs. The Defendant in answer to the Plaintiffs claim counter claims for the return of the discounts given on the purchase price.

The Issue

9. In the Court’s view the sole issue is the period of completion of the apartments as well as the period from which the Plaintiffs are entitled to claim for late delivery.

Period of Completion

10. Both the issues in this case has been decided by the apex court. In the case of **Ang Ming Lee & Ors v Menteri Kesejahteraan Bandar, Perumahan dan Kerajaan Tempatan & Anor and Other apeeals [2019] 6 MLRA 434** the court decided that any extension given for completion of residential period within 36 months is ultra vires the law.
11. In this Court’s view it makes no difference whether the Plaintiffs were aware of the extension as an unlawful provision of the law remains unlawful regardless of knowledge. All agreements must be read with the provision of the law.



12. In short the extension of 54 months given by the authorities is invalid and therefore the period as stated under the law of completion of 36 months applies to the sale and purchase agreement in this case.
13. The case of **PJD Regency Sdn Bhd v Tribunal Tuntutan Pembeli Rumah & Anor and Oher appeals [2021] 1 LNS 9** decided that the period of completion of 36 months be calculated from the date of payment of booking fees.
14. The Defendant in the calculation of the late delivery penalty cannot take into account any discounts given on the purchase of property as that is not applicable for the calculation of the penalty under the sale and purchase agreement.
15. Further any discounts given are not refundable as they form part of the offer and acceptance for the purchase of the properties leading to both parties entering into the sale and purchase agreement.

Conclusion

16. In this case the Court concludes that the Defendant has no defense to the Plaintiffs' claim for late delivery penalty. The Defendant has also no cause of action against the Plaintiffs as claimed under the counter claim.
17. In the upshot both the Plaintiffs' application for summary judgement and striking out the Defendant's counter claim is allowed with a cost of RM3,000 for each of the application and the Defendant's application to strike out the Plaintiffs' claim is dismissed with a cost of RM3,000.

Dated: 10.6.2022

sgd

DATO' HAJI AKHTAR BIN TAHIR
Judge
High Court of Malaya, Kuala Lumpur



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CASES CITED :

1. Ang Ming Lee & Ors v Menteri Kesejahteraan Bandar, Perumahan dan Kerajaan Tempatan & Anor and Other appeals [2019] 6 MLRA 434;
2. PJD Regency Sdn Bhd v Tribunal Tuntutan Pembeli Rumah & Anor and Oher appeals [2021] 1 LNS 9.

