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PROTECTING HOMEBUYERS : Understanding Late Delivery and Liquidated Agreed Damages (LAD)

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Introduction

Purchasing a property is often one of the most significant financial decisions an individual will make in their lifetime. For buyers of newly launched property developments, this milestone can also bring certain risks, one of the most common being delays in the delivery of vacant possession. This article explores **the legal implications of late delivery of vacant possession, including whether a developer can lawfully extend the delivery period, the statutory rights and protections afforded to purchasers under Malaysian law and the legal remedies available to enforce those rights.**



The Governing Legal Framework

In Peninsular Malaysia, housing development is primarily regulated by the **Housing Development (Control & Licensing) Act 1966** (“Act”) and the **Housing Development (Control & Licensing) Regulations 1989** (“Regulations”). These laws aim to regulate and license the business of housing development and to protect the interests of purchasers^[1].

The **Sale and Purchase Agreement (SPA)** is the principal legal instrument defining the rights and obligations of both developers and purchasers. For licensed housing developments, the **SPA** must follow the statutory forms prescribed in the Regulations.

[1] Housing Development (Control & Licensing) Act 1966.



Timeframe for Delivery of Vacant Possession

For properties sold by licensed developers, the delivery timeline is determined by the type of property title: -

- a) **Property with individual title:** Governed under **Schedule G of the Regulations. Clause 24(1)** requires the developer to deliver vacant possession within 24 months from the date of the **SPA**^[2].
- b) **Property with strata title:** Governed under **Schedule H of the Regulations. Clause 25(1)** requires the developer to deliver vacant possession within 36 months from the date of the **SPA**^[3].

[2] Clause 24(1) of the Housing Development (Control & Licensing) Regulations 1989.

[3] Clause 25(1) of the Housing Development (Control & Licensing) Regulations 1989.

Consequences of Late Delivery of Vacant Possession and the Right to Claim Liquidated Agreed Damages (LAD)

Where a developer fails to deliver vacant possession within the stipulated period, according to **Clause 24 (2) of Schedule G of the Regulations** and **Clause 25 (2) of Schedule H of the Regulations**, the Developer shall be liable to pay the Purchaser liquidated damages calculated from day to day at the rate of ten per centum (10%) per annum of the purchase price, running from the expiry of the delivery period stated in the **SPA** until the date the purchaser actually takes vacant possession^[4].

[4] Clause 24(1), 25(1) of the Housing Development (Control & Licensing) Regulations 1989.

In practice, many purchasers pay a booking fee or deposit before signing the **SPA**. This raises an important question: ***Should LAD be calculated from the date of booking fee payment or from the SPA date?***

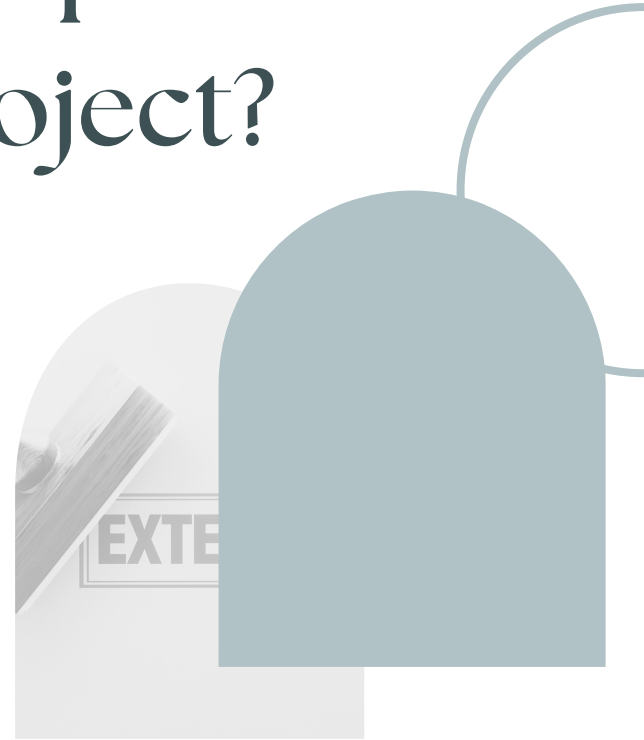
The Federal Court in ***PJD Regency Sdn Bhd v Tribunal Tuntutan Pembeli Rumah & Anor and Other***, resolved this issue by holding that **LAD** calculation should begin from the date the purchaser pays the booking fee or deposit—being the point at which the purchaser has given written intention to purchase, not strictly from the SPA date^[5]. This landmark decision protects homebuyers from potential delays caused by administrative gaps between booking and execution of the SPA.



[5] [2021] 2 MLJ 60 (FC).

Can Developers Extend the prescribed completion period of project?

Under **Regulation 11(3) of the Regulations**, the Controller of Housing may, in special circumstances, waive or modify the terms of the statutory contract of sale by issuing a written certificate^[6].



In the case of ***Ang Ming Lee & Ors v Menteri Kesejahteraan Bandar, Perumahan dan Kerajaan Tempatan & Anor and other appeals***, the developer applied to the Controller of Housing for an extension of time (EOT) of 12 months for delivery of vacant possession of the units to the purchasers. The developer appealed against the rejection to the **Minister to the Minister of Urban Wellbeing, Housing and Local Government**. By a letter signed by a person on behalf of the controller, the developer's appeal was allowed.

[6] Regulation 11(3) of the Housing Development (Control & Licensing) Regulations 1989.

The Federal Court held that the controller has no legal authority to modify any provision in **Schedule H** contract of sale to the developer. **Regulation 11(3) of the Regulations**, conferring power on the controller to waive and modify the terms and conditions of the contract of sale is ultra vires the Act. The Minister did not have the authority to delegate this power to the Controller. [7]

However, it is to be take note that the principle in **Ang Ming Lee** case shall only be applied prospectively and not retrospectively. This is because in the recent Federal Court case of **Obata-Ambak Holdings v Prema Bonanza** held that the principle in Ang Ming Lee will not be applied to extensions granted by Controller prior to the principle of the case which means the extensions granted by the Controller before Ang Ming Lee's case is valid. [8]

Despite that the Controller has no power to grant extension of time to the developer for extension of time, the Minister retains the discretion to grant extensions. In the Court of Appeal case of **Bludream City Development Sdn. Bhd. v. Kong Thye & Ors and Other**, despite that the Controller has no power to grant extension of time, this does not take away the power of the Minister to give direction in extending the time for vacant possession in order to safeguard the purchasers' interest. **The Minister's valid powers are not diminished merely because an earlier delegation to the Controller was invalid** [9].

[7] [2020] 1 MLJ 281 (FC).

[8] [2024] 5 MLJ 897 (FC).

[9] [2022] 2 CLJ 829 (COA).



Beware of blacklisted developer

Before committing to a property purchase, purchasers are strongly advised to verify ***whether a developer has been blacklisted before committing to a purchase.*** A list of blacklisted developers is available on the official website of the **Ministry of Housing and Local Government (KPKT):**

👉 <https://teduh.kpkt.gov.my/peringatan-pemaju>



Remedies for purchaser

If the developer refuses to pay LAD voluntarily, the purchaser has the right to file a complaint with the **Tribunal for Homebuyer Claims**. However, there is a **limitation** on the amount that a purchaser can claim, which is RM50,000.00.^[10] The claim must be made within 12 months from the earlier of:

1. the date of issuance of the certificate of completion and compliance (CCC) of the property or facilities;
2. The expiry of the defects liability period as set out in the **SPA**; or
3. The date of termination of the **SPA**, if it is terminated before the CCC is issued^[11].

If the claim is not filed within this 12-month period, the purchaser's remaining option is to initiate a civil action in court, subject to a six (6) year limitation period from the date of breach^[12].

[10] Section 16M(1) of the Housing Development (Control and Licensing) Act 1966.

[11] Section 16N(2) of the Housing Development (Control and Licensing) Act 1966.

[12] Section 6 of the Limitation Act 1953.



Conclusion

Timely delivery of property is not merely a commercial expectation—it is a contractual obligation under the law. The **Housing Development (Control and Licensing) Act 1966** and its Regulations prescribe strict delivery timelines and impose liability for late delivery through **LAD**.

Recent Federal Court decisions have reinforced these protections, making clear that any attempt to vary or extend the completion period without lawful approval from the Minister is unenforceable. **Purchasers should remain vigilant, fully understand their rights under the SPA and the law, and act promptly to seek remedies where those rights are breached.**

The view expressed herein are those of the author and do not necessarily the views of the firm. Should you have any legal queries, corporate or otherwise, please feel free to reach out to the firm for further assistance.



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