



Statutory Contracts: When is the starting point for calculating when vacant possession will be due?

Is it the date of the Sales and Purchase Agreement? Or is it rather the date of the collection of booking fees (if any) by the developer, its agent, and/or its representative?

As a preamble, contracts for the purchase of housing accommodation from housing developers are governed by the Housing Development (Control and Licensing) Act 1966 (“**the Act**”).¹

In *PJD Regency Sdn Bhd v Tribunal Tuntutan Pembeli Rumah & Anor* [Federal Court Civil Appeal No. 01(f)-29-10/2019(W)] & Other appeals (“**PJD Regency**”), the Federal Court deliberated upon the starting point for calculating when vacant possession will be due in light of the practice of collection of booking fees.²

¹ See the Preamble to the Housing Development (Control and Licensing) Act 1966 and the definitions of “housing accommodation,” “housing developer,” and “housing development” in Section 2 of the Act

² *PJD Regency Sdn Bhd v Tribunal Tuntutan Pembeli Rumah & Anor* [Federal Court Civil

The statutory contracts found in the Housing Development (Control and Licensing) Regulations 1989 (“**the Regulations**”), made pursuant to the Act, contain express clauses on vacant possession which use the date of the Sales and Purchase Agreement as the starting point.³

In *PJD Regency*, the developer collected booking fees from the purchasers but relied on the date of the Sales and Purchase Agreement as the starting point for calculating when vacant possession will be due.⁴

This arrangement meant that the developer benefited both by getting monies from purchasers earlier and by paying lesser in liquidated ascertained damages since the starting point for

Appeal No. 01(f)-29-10/2019(W)] & Other appeals, at paragraph 8

³ See Schedule G and Schedule H of the Housing Development (Control and Licensing) Regulations 1989

⁴ *PJD Regency Sdn Bhd v Tribunal Tuntutan Pembeli Rumah & Anor* [Federal Court Civil Appeal No. 01(f)-29-10/2019(W)] & Other appeals, at paragraph 95



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calculating when vacant possession will be due is later.

The Federal Court in PJD Regency strongly condemned the practice of collection of booking fees, going to the extent of calling it an “illegal practice.”⁵

The Federal Court in PJD Regency constructed the illegality against the developer and held that, for statutory contracts, if there are booking fees collected, the starting point will be the date of collection of the booking fees.⁶

This would mean that in the absence of collection of booking fees, the starting point for calculating when vacant possession would be due would be the date of signing of the Sales and Purchase Agreement.

The decision in PJD Regency should be celebrated as a significant decision in favour of purchasers. Since the Federal Court cannot practically stop the practice of collection of booking fees, it opted (and rightly so) to interpret the illegal practice of collecting booking fees against the developer.

P. E. LIM ©

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⁵ *PJD Regency Sdn Bhd v Tribunal Tuntutan Pembeli Rumah & Anor* [Federal Court Civil Appeal No. 01(f)-29-10/2019(W)] & Other appeals, at paragraph 49

⁶ *PJD Regency Sdn Bhd v Tribunal Tuntutan Pembeli Rumah & Anor* [Federal Court Civil Appeal No. 01(f)-29-10/2019(W)] & Other appeals, at paragraph 59