



Rosli Dahlan
Dispute Resolution
T: +603 6208 5804
E: rd@lh-ag.com



Ho Ai Ting
Dispute Resolution
T: +603 6208 5907
E: hat@lh-ag.com

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Settlement Agreement Entered in HDA Dispute is Valid

Pinpoint Consortium (M) Sdn Bhd v Mammoth Empire Land Sdn Bhd [\[1\]](#)

In a recent landmark decision, the High Court held that a settlement agreement regarding liquidated ascertained damages (**LAD**) for late delivery of vacant possession between a housing developer and a homebuyer is valid under the Housing Development (Control & Licensing) Act 1966 (**HDA**) and the Housing Development (Control & Licensing) Regulations 1989 (**Regulations**), read with s 24 of the Contracts Act 1950.

The plaintiff executed a statutory Schedule H sale and purchase agreement with the defendant for the purchase of an apartment. Consequent to a delay in the delivery of vacant possession of the apartment and common facilities to the plaintiff, the parties entered into a settlement agreement, in which the plaintiff accepted LAD at a reduced sum as full and final settlement.

The plaintiff subsequently reneged on the Settlement Agreement and sued the defendant for the full sum of the LAD. On application by the defendant, the Sessions Court struck out the plaintiff's claim in view of the Settlement Agreement with regard to the LAD.

The plaintiff appealed to the High Court. The plaintiff contended, among others, that the Settlement Agreement constituted an attempt to contract out of the HDA and the Regulations, thereby rendering it invalid and void.

In dismissing the appeal, the High Court held, among others, that:

- (a) settlement agreements are valid under s 64 of the Contracts Act 1950;
- (b) there is nothing in the HDA and the Regulations which invalidates a settlement agreement;
- (c) there isn't any provision in the HDA and the Regulations that requires the approval or consent of the Controller of Housing to validate a settlement agreement; and
- (d) in fact, ss 16(T)(3) and 16AB(a) of the HDA provide specifically for settlement agreements between housing developers and

homebuyers.

The High Court affirmed the earlier decision of the Court of Appeal in *Oxbridge Height Sdn Bhd v Abdul Razak Mohd Yusof & Anor*,^[2] which recognised the validity of a settlement agreement between a housing developer and a homebuyer. It also reaffirmed the law on freedom to contract. It is advisable that parties seek legal advice before entering into any settlement agreement.

Ho Ai Ting and **Christopher Ik Chu Jek** (icj@lh-ag.com)

If you have any queries, please contact the authors or team partners **Rosli Dahlan** (rd@lh-ag.com) and **Ho Ai Ting** (hat@lh-ag.com).

Lee Hishammuddin Allen & Gledhill

Level 6, Menara 1 Dutamas
Solaris Dutamas
No. 1, Jalan Dutamas 1
50480 Kuala Lumpur
Malaysia

T +603 6208 5888
F +603 6201 0122/0136
E enquiry@lh-ag.com
W www.lh-ag.com

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^[1] [2019] 4 AMR 595

^[2] [2015] 1 AMCR 43