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A Welcome Departure from 'Faber Union' Rule

GJH Avenue Sdn Bhd v Tribunal Tuntutan Pembeli Rumah, Kementerian Kesejahteraan Bandar, Perumahan dan Kerajaan Tempatan & Ors^[1]

Twenty-four years ago, in *Faber Union*,^[2] the (then) Supreme Court, in adopting its earlier decision in *Hoo See Sen*,^[3] held that for the purpose of ascertaining the date of delivery of vacant possession, the relevant date when time started to run was the date on which the purchaser paid the booking fee, and not the date of the signing of the sale and purchase agreement. This 'Faber Union' rule, as it has come to be known, has continued to "haunt" most developers until today.

Recently, the Court of Appeal departed from the long-held 'Faber Union' rule and held that "the date of this Agreement", as provided for in Clause 22 of the statutory Schedule G sale and purchase agreement which deals with the time for delivery of vacant possession, is the actual date that the sale and purchase agreement was entered into. In other words, for the purpose of ascertaining the date of delivery of vacant possession, the relevant date when time starts to run is the actual date of the statutory sale and purchase agreement.

In allowing the appeal and quashing the award by the Tribunal for Homebuyer Claims, the Court of Appeal held, among other things, that:

- (a) Clause 22 is very clear and unambiguous in that it specifically provides that vacant possession shall be delivered within 24 calendar months "from the date of this Agreement", i.e. the actual date of the statutory sale and purchase agreement;
- (b) The decisions of *Hoo See Sen* and *Faber Union* are distinguished as they concerned sale and purchase agreements that were entered into before the introduction of Schedule G of the Housing Development (Control & Licensing) Regulations 1989 and before the Housing Development (Tribunal for Homebuyer Claims) Regulations 2002;
- (c) The fact that the law prohibits the collection of deposit when it is not provided for by the statutory sale and purchase agreement clearly indicates that "the date of this Agreement",

as provided for in the agreement, is the actual date the statutory sale and purchase agreement was entered into.

The Court of Appeal affirmed its earlier decision in *Kompobina Holding* [\[4\]](#) in upholding that the date of delivery of vacant possession was 24 months from the date of the sale and purchase agreement. It also reaffirmed the trite principles that the court is to refrain from rewriting the terms of a contract, what more a statutory contract, when the words used are certain, plain and unambiguous.

This recent decision has certainly shed a positive light in favour of the housing developers and reshaped the law to take into account the current market practice governing the housing industry.

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[\[1\]](#) Court of Appeal Civil Appeal No M-01(a)-388-10/2017

[\[2\]](#) *Faber Union Sdn Bhd v Chew Nyat Shong & Anor* [1995] 3 CLJ 797

[\[3\]](#) *Hoo See Sen & Anor v Public Bank Bhd* [1988] 1 CLJ (Rep) 125

[\[4\]](#) *Kompobina Holding Sdn Bhd v Tribunal Tuntutan Pembeli Rumah & Anor* [2017] 1 MLJU 2268