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A Sigh Of Relief For Developers?
Analysis Of Country Garden Danga Bay v Home Tribunal

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The powers of the housing tribunal were clarified by the Federal Court recently, setting yet another precedent to the landscape of housing developments. This alert sets out the facts and findings of the landmark decision of *Country Garden Danga Bay v Home Tribunal.*

Facts

A missing covered balcony and a disgruntled homebuyer were what brought this case into existence.

The 2nd Defendant (the Purchaser) had alleged that a covered balcony was a term promised by the Appellant (the Developer) as part of the unit he had purchased. As a result, the Purchaser had claimed for the maximum compensation the Home Tribunal could accord, which was RM 50,000.00. Subsequently, the Home Tribunal, High Court and the Court of Appeal had delivered decisions in favour of the Purchaser. The facts of the case are as follows:

- The Purchaser and the Developer entered into a prescribed Schedule H of the Housing Development (Control and Licensing) Regulations (HDA) Sale and Purchase Agreement (SPA) in 2013.
- The Purchaser received vacant possession of his unit in November 2017, to which he had signed an inspection form.
- The Purchaser commenced renovation on his unit.
- In January 2018, the Purchaser filed for a claim in the Home Tribunal, alleging that the wrong unit was given to him due to the missing covered balcony.
- The Purchaser was then awarded RM 50,000.00.

REIMAGINING LEGAL SOLUTIONS

It is worthy to note that one of the allegations from the Purchaser in the Tribunal had been that some pages of the SPA were materially altered without his consent. Alleging that there was a breach in natural justice and procedural unfairness, the Developer took this matter to the Court of Appeal. They were of the opinion that lack of time was accorded to them to prepare and make informed representations of their case especially pertaining to the allegation that there were alterations to the SPA -- only 15 minutes were given. Furthermore, the Developer claimed that they were not given access to all available documents, which in this matter had been a Technical Inspection Report.

The High Court and the Court of Appeal disagreed with the Developer's contention. They believed that such an allegation from the Purchaser had been known to them from the beginning, giving them ample time to prepare. They were not caught by surprise. After the Court of Appeal had dismissed the Developer's appeal, the Developer decided to take their final appeal to the Federal Court.

Issues

Four important questions were raised in the Federal Court, some of which were novel points of law:

(a) Could the Home Tribunal exercise their jurisdiction over a matter that was not based on the express terms of the SPA but based on a display model in the showroom?

(b) Could the term "*be varied or set aside*" stated in Section 16Y(2)(e) of the HDA 1966 provide jurisdiction to the Home Tribunal to include additional specifications (i.e. a covered balcony in this case) which were not initially provided for in the SPA? If yes, could the Home Tribunal then award damages due to such powers conferred upon them?

(c) Could the Purchaser initiate an action after he had duly accepted vacant possession and started renovation to his unit?

(d) Was there a breach of natural justice in the limited 15 minutes time given to the Developer to make their case?

Decision

The Federal Court answered the questions in favour of the Developer by stating that the Home Tribunals only have jurisdiction to decide *"based on a cause of action arising from the sale and purchase agreement*", which was interpreted in its plain and ordinary meaning from Section 16N(2) of the HDA 1966. As the covered balcony was not expressly provided for in the SPA, therefore the Home Tribunal has no jurisdiction to hear such a claim. In another word, no cause of action arose from the SPA.

As for Section 16Y(2)(e) on the power "*to vary or set aside*", the Federal Court deemed that such power only relates to terms contained in the statutory SPA, and could be exercised in situations where, for example, the SPA entered into between the parties was inconsistent with the statutory SPA. Furthermore, the third question was answered in the negative. Once the Purchaser had taken and accepted vacant possession, inspected the premises and began renovation of their units -- thus exercising their ownership rights -- the Purchaser was estopped from claiming that he had been allocated the wrong unit.

Lastly, the issue which had been raised in the Court of Appeal on breach of natural justice was answered in the negative. The Federal Court agrees with the position taken by the Court of Appeal, stating that the Developer has had plenty of time to prepare against the allegations made by the Purchaser.

Commentary

In light of recent cases which were decided against the favour of the developers, this decision was a breath of relief for them. This ruling by the apex court was indeed monumental, as it sets out the nature of a homebuyer's claim in the Home Tribunal i.e. that they could only decide disputes that arose from the express terms in the SPA. It provides a reminder to prospective homebuyers as well, to always be

vigilant and to inspect the unit given to them during vacant possession thoroughly. Most importantly is to be familiar with the terms of the SPA so that homebuyers are able to identify what they should be given in the unit they have purchased.

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