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Property Developer Held Liable For Unfulfilled Promises

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In the recent case of *Toh Shu Hua & Ors v Wawasan Rajawali Sdn Bhd & Anor* [2023] 2 CLJ 310, the issue of misrepresentation by a developer regarding unfulfilled promises in a property development project was brought to light. The High Court's ruling sheds light on the responsibilities of a developer towards their purchasers and the legal implications of failing to fulfil promises made during their marketing of the project.

Background

This case involved 122 plaintiffs who purchased apartments in a project developed by the first defendant, a housing developer. The second defendant was the parent company of the first defendant. The plaintiffs alleged that the developer had misrepresented as to the background of the project. Essentially, the misrepresentation in this case centred around the brochures and sales pitch used to market the apartments. The developer had portrayed the project as a self-sustained integrated development in the heart of Cyberjaya, offering a diverse habitat for work, play and recreation. The promise of "Your World In One Place" created a vision of a vibrant lifestyle for potential purchasers.

However, during the trial, it became evident that the project did not live up to the promises made in the marketing materials. The amenities and overall vibrancy that were showcased in the brochures were absent from the present reality and not likely to be achieved in the near future. Notably, the completion of crucial components such as a shopping mall, hotel, central park and other commercial developments, were significantly delayed or not achieved at all. As a result, the plaintiffs were unable to enjoy the lifestyle they were led to expect.

"Misrepresentation" means positive assertions not warranted by the person making them, any breach of duty that misleads another and causing a party to make a mistake about the

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substance of the agreement. To put it simply, it is a false statement of a material fact which made by one party and has the result of inducing the other party to enter a contract.

The Court's Ruling

The High Court held that the developers failed in their duty to provide a near accurate description of the project. The court found that the defendant had perpetuated misrepresentation, which influenced the plaintiffs' decision to purchase the apartments. Accordingly, the court awarded the plaintiffs RM50,000 each for the loss of enjoyment on the promise of the first defendant.

In addition to this, the High Court also awarded the sum of RM2,000,000 for aggravated damages, which was to be shared amongst the plaintiffs. The first defendant was also ordered to rectify the defects in the affected properties within three months from date the judgment.

The developer's argument that the brochure contained an exclusion clause safeguarding them from any discrepancies in the project's description was rejected by the High Court as the court took the view that the exclusion clause was merely in small wordings at the bottom of the page.

Commentary

In summary, this case highlights several significant aspects of misrepresentation and unfulfilled promises by developers in the context of property sales, namely:

i. Importance of Marketing Transparency:

Property developers must exercise utmost transparency in their marketing materials and sales pitches. Misleading assertions or promises can lead to legal consequences, as demonstrated in this case. It is essential for developers to ensure that the information provided to potential buyers accurately represents the current state and future prospects of the development.

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ii. Exclusion Clauses:

This case serves as a reminder that exclusion clauses in contracts may not always shield developers from liability in cases of misrepresentation. Courts may scrutinise the positioning and wording of such clauses and consider whether there was a grain of truth in the promises made. Developers should not solely rely on exclusion clauses to absolve themselves of responsibility.

iii. Compensation for Loss of Enjoyment:

The court's decision to award RM50,000 to each plaintiff for the loss of enjoyment due to unfulfilled promises demonstrates the court's willingness to recognise intangible losses and compensate buyers for the disappointment and inconvenience caused by unmet expectations.

iv. Impact on Property Development Industry:

This ruling may have significant implications for the property development industry, and it serves as a reminder to developers of their legal responsibilities towards purchasers. The court emphasised the importance of delivering what was promised in marketing materials and therefore, developers should always fulfil the promises made during marketing, as any deviation may result in claims of misrepresentation against the developer.

This case serves as a timely reminder for property developers to be cautious and honest in their marketing efforts. Misrepresentation can lead to legal battles and financial liabilities, affecting both the developers and the buyers, in addition to reputational damage to the developer.

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