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COVID-19 Act: Application of Saving Provision in LAD Claim

The Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (COVID-19) Act 2020 (**COVID-19 Act**) was gazetted and came into force on 23 October 2020.

The COVID-19 Act introduced modifications to the provisions of certain legislations which include the Housing Development (Control and Licensing) Act 1966 (**HDA 1966**). Among others, one of the modifications deals with matters relating to delivery of vacant possession (**VP**) of properties and liquidated ascertained damages (**LAD**) caused by the delay in delivering VP. Specifically, s 35(1) excludes the period of 18 March 2020 to 31 August 2020 (**Relevant Period**) from the calculation of time for delivery of VP and LAD, notwithstanding the relevant clauses in the statutory sale and purchase agreements prescribed by the Housing Development (Control and Licensing) Regulations 1989 (**HDA Regulations**). The modifications to the HDA 1966 are, however, subject to a saving provision in s 37(1) of the COVID-19 Act (**Saving Provision**).

Recently, in *Jason Yap Wei Kian*,¹ the High Court, in overturning a decision of the Magistrates' Court, applied the Saving Provision and upheld the purchaser's claim for LAD incurred during the Relevant Period.

Brief facts

By a Schedule H sale and purchase agreement dated 27 November 2015 (**SPA**), the Purchaser purchased a property from the Developer. VP of the property was not delivered to the Purchaser within 36 months from the date of the SPA, i.e. by 26 November 2018. According to the Purchaser, VP was only delivered on 18 July 2020 when he collected the key. Based on the VP notice issued by the Developer on 2 July 2020, VP was deemed delivered on 15 July 2020 on the expiry of the 14-day period stated in the notice.

On 26 August 2020, the Purchaser filed a claim at the Magistrates' Court against the Developer for LAD caused by the late delivery of VP of the property and late completion of common facilities. The magistrate allowed the Purchaser's claim in part and ruled the Purchaser was not entitled to LAD for the period from 18 March 2020 to 15 July 2020 (**Subject Period**) (which fell within the Relevant Period under s 35(1) of the COVID-19 Act). The magistrate did not consider s 37(1) on the grounds the Purchaser failed to plead the said provision in his statement of claim.

The Purchaser appealed to the High Court. The primary issue before the High Court lies in the computation of the LAD; whether the magistrate had erred in excluding the Subject Period when computing the LAD to be awarded to the Purchaser.

Decision

In allowing the appeal, the High Court agreed that s 35, read with s 32, of the COVID-19 Act, provides the Relevant Period shall be excluded when calculating the time for delivery of VP and LAD. Nevertheless, these two provisions need to be read together with the Saving Provision in s 37(1), which states:

"Saving

37. (1) The modifications in sections 34, 35 and 36 shall not affect any legal proceedings commenced, or any judgment or award obtained, to recover late payment charges payable by the purchaser or liquidated damages payable by the developer or any other sum during the period from 18 March 2020 until the date of publication of this Act."

The Purchaser filed the claim before the COVID-19 Act was gazetted. Section 37(1) of the COVID-19 Act therefore applies, and the Developer is liable to pay LAD for the Subject Period.

The High Court also dealt with the procedural point on pleadings. It reaffirmed that O 18 rr 7 and 8 of the Rules of Court 2012 only require facts to be pleaded and not evidence. The High Court held it was not mandatory for the Purchaser to plead his reliance on s 37(1) of the COVID-19 Act in the statement of claim since the facts that formed the basis of the Purchaser's claim for LAD had already been pleaded.

Commentary

This decision reflects earlier public criticisms that the Saving Provision nullifies the objective of the modifications to the HDA 1966 which are aimed at providing temporary measures to reduce the impact of the pandemic-driven crisis on both the homebuyer and housing developer. It is now clear that housing developers who have existing legal actions filed or judgments obtained against them between 18 March 2020 and 22 October 2020 will not be able to claim the relief offered by the COVID-19 Act.

This decision also reaffirms the fundamental principle of statutory interpretation that a statute is to be read and interpreted as a whole and not in isolation. Each provision in a statute is to be construed with reference to the context and other clauses or provision of the Act concerned.² It also shows the court's inclination to adopt a strict and literal approach when applying and interpreting the provisions of the COVID-19 Act.

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If you have any queries pertaining to this update, or on housing related disputes, please contact partner **Ho Ai Ting** (hat@lh-ag.com). For information relating to the modifications introduced by the COVID-19 Act to the HDA 1966, please refer to our earlier legal update, "[COVID-19 Bill: Are Housing Developers Relieved From LAD?](#)"

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