

LAND LAW

Sale and purchase agreement – Delay in completion – Time when vacant possession deemed delivered – Cut-off date for computation of liquidated ascertained damages – Whether on date purchaser notified issuance of Certificate of Fitness for Occupation – Whether on date when purchaser took actual possession

Everest Point Sdn Bhd & Anor v Lim Peck Sim & Ors

[2017] 7 CLJ 401, Federal Court

Facts The respondents were joint purchasers of a unit ("the Unit") in a housing project developed by first appellant as the developer. A sale and purchase agreement (SPA) signed by the parties stated that the vacant possession of the Unit would be delivered on or before 28 June 2008, failing which liquidated ascertained damages (LAD) would be payable to the respondents. The first appellant failed to deliver vacant possession on the agreed date. The CFO, however, was issued only on 25 May 2011, and the notification of CFO took place on 30 May 2011. The respondents indicated their intention take vacant possession on 16 April 2014 but only did so on 20 September 2016. Prior to the taking of vacant possession, the respondents apply for an order that they be allowed to claim continuous LAD from 28 June 2008 until the date they took actual vacant possession. The High Court held that the vacant possession was deemed delivered on 30 May 2011, therefore, the respondents were entitled to LAD from 28 June 2008 to 30 May 2011. Upon appeal, the Court of Appeal ruled that the respondents were entitled to continuous LAD up to the date they indicated their intention to take vacant possession, which was 16 April 2014. Dissatisfied, hence this appeal.

Issue The main issue was when was the cut-off date for the computation of the LAD.

Held In allowing the appeal and reinstating the decision of the High Court, it was held that the effective date of delivery of vacant possession was the date when the issuance of the CFO by the appropriate authority was notified to the respondents on 30 May 2011, instead of the date when the respondents took actual possession on 20 September 2016. Thus, the cut-off date for the computation of LAD in relation to the late delivery of vacant possession was 30 May 2011.