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# Too little, too late

Many irresponsible developers still refuse to pay full damages to home buyers for delivering properties late. Aware of this long standing issue, the Government plans to find a solution soon.

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**TAKE it or leave it.**  
Those were the options given to home owner Gerald Chu by a developer of a new apartment in Kuala Lumpur.  
Despite handing over the keys to his brand new unit four months late, the developer didn't want to pay Chu the full damages for the late delivery.  
He was instead forced to take their offer: only 50% of the compensation, known as Liquidated Ascertained Damages (LAD).  
"I felt so cheated. The unit was supposed to be handed over in April last year, following the sales and purchase agreement.  
"But it was delayed by the developer for four months. I should be receiving LAD worth RM16,000 but instead, I received only RM8,000," says the finance executive.  
When he asked why the developer was only paying half the sum, Chu was told "it was a management decision" without room for any negotiation.  
Without much choice, he knew he had to take it, or be left with nothing.  
Calling the situation unfair, Chu plans to bring the matter up to the Tribunal of Homebuyers' Claims.  
"The developer owes us an explanation. "I signed the acceptance letter under duress because I need the money to repay my home loan," he says.  
Having a similar experience, a home owner known only as Steve, says many are unaware of their right to being paid LAD.  
"Some irresponsible developers won't even inform customers if LAD is to be paid.  
"This was the case in my apartment. My neighbour only knew that she could claim the LAD when I told her about it.  
"If I didn't actively pursue the payment, the developer wouldn't have bothered," says the businessman, in his 30s.  
He urges home buyers to be proactive and be aware of their rights to avoid being short changed.  
LAD payments are set at 10% per annum based on the purchase price of the property.  
Chu and Steve's situation is not new, and this has been a long-standing issue.  
There have been cases of buyers who have been offered zero compensation despite receiving their properties late.  
Previously, it was reported that some buyers have been helpless against developers

who have successfully applied to the then Urban Wellbeing, Housing and Local Government Ministry to approve an extended deadline of delivery – which means no LAD needs to be paid to buyers.  
But in February 2017, the High Court ruled in a landmark judgment that the Housing Controller has no power to grant an extension of time to developers who delay the completion of housing projects.  
This means a housing developer has to pay compensation to affected buyers for delays in the delivery of vacant possession.  
However, despite these developments, the problem of irresponsible developers refusing to pay the full LAD amount to home owners still persists.  
Housing and Local Government Minister Zuraida Kamaruddin acknowledges the situation, understanding that home owners are caught without much choice.  
"We will look into our housing policies involving developers to address this problem. We want to have a mechanism in place to avoid manipulation by irresponsible developers.  
"I will need to study it closely but we definitely want to introduce changes," she tells *Sunday Star*, when asked to comment on this matter recently.  
While home owners can take such disputes to the Tribunal of Homebuyers' Claims, some believe it is time to do away with this problem for good.  
National House Buyers Association honorary secretary-general Datuk Chang Kim Loong says the association is proposing for the Government to come up with a "set off" mechanism to solve this problem.  
"For example, if the developer owes LAD to house buyers, the sum can be set off with the amount owed by the house buyers to the developer.  
"This means the house buyer pays less charges to the developer, so that the full LAD payment owed by the developer can be cancelled off," he says.  
Chang says it is unfair for developers to refuse to pay LAD even though it is stated in the sales and purchase agreement.  
"This issue is still a big thorn in the property market," he says.  
Through his experience, he says he has only known of one case where the developer paid the LAD in full and immediately, as stipulated in the agreement.  
Chang advises home buyers to raise their

problems with the Tribunal of Homebuyers' Claims.  
"Bringing the matter to the court of law will be the last resort," he says, adding that home buyers might have to spend legal fees on the case that could even be more than the LAD payment.  
Whitman Independent Advisors Sdn Bhd managing director Yap Ming Hui urges house buyers to choose a developer with a good reputation to avoid being short changed.  
"In the first place, selecting the right developer is critical. Reputable developers cannot afford to tarnish their brand name by defaulting payments," he says.  
"When developers are late in delivering vacant possession, it is probably because they are facing financial difficulties or failing to get a Certificate of Completion and Compliance.  
"These reasons reflect on the capability of the developer. Be it poor project management or poor finances, it is not good for home buyers," he adds.  
Meanwhile, the Real Estate and Housing Developers Association Malaysia (Rehda) urges its members to practise good governance in their business, in line with the law.  
For Rehda members who refuse to pay LAD for late delivery to home buyers, action may be taken against them by the association.  
"Actions that can be taken include deregistration of their membership, although we review instances like this on a case-to-case basis," says Rehda president Datuk Soam Heng Choon.  
"Payment of anything less than the stated amount must be done with the mutual agreement of both the developer and purchaser. However, if there is any element of force or coercion involved, the purchaser involved should report it to the related authorities," he says.  
He stresses that developers who fail to deliver vacant possession of properties within the agreed time must pay the LAD to home owners, as stated in the Sale and Purchase Agreement.  
"Timely delivery of vacant possession is within their right as a buyer, and this right is protected by law," Soam says.  
He adds that developers are responsible in ensuring that houses are delivered to buyers within the agreed time.