

Headline	Landmark court decision to affect lending sector		
MediaTitle	The Star		
Date	02 Dec 2019	Color	Full Color
Section	StarBiz	Circulation	175,986
Page No	3	Readership	527,958
Language	English	ArticleSize	371 cm ²
Journalist	Thean Lee Cheng	AdValue	RM 18,671
Frequency	Daily	PR Value	RM 56,013



Landmark court decision to affect lending sector

HBA says people will be more confident to buy houses now

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PETALING JAYA: The landmark decision last Tuesday by the apex court which ruled in favour of 104 house buyers has wide implications on the property and lending sectors, Property Real Estate Lawyers Association said.

Association president Datuk Pretam Singh Darshan Singh said: "Developers have been given extension of time to complete their projects under various circumstances. There are serious implications if every developer granted this extension due to certain circumstances are being sued for liquidated ascertained damages (LAD). If the developer has not budgeted for this type of claims because they have always been under the impression that the approval given to them was valid, and now all of a sudden, they have house buyers making a claim, it will affect the developer and the end financier," Pretam said.

"Therefore, that decision affects both the property and the banking and lending industry. The implications are wide," he said.

The next question to ask is whether last Tuesday's decision has retrospective or prospective effect, he said.

The written judgement makes no mention of either.

The National House Buyers Association (HBA) said the ruling is retrospective.

Pretam said there are four tests to determine its retrospective/prospective effect.

> The more entrenched a law or legal principle is, the greater the need for prospective overruling



Pretam: The implications are wide.

> The greater the change to the law, the greater the need for prospective overruling

> The less foreseeable the change to the law, the greater the need for prospective overruling.

> The greater the reliance on the law or legal principle being overruled, the greater the need for prospective overruling.

However, he conceded at either end, they may produce their own brands of injustice. Nonetheless, the four guidelines are important.

Between 2014 and July 2019, the ministry

granted extensions to 523 out of 678 applications, or 77%.

On a yearly basis, this works out to approvals in the high 70% range, with an 87% approval rate in 2014.

Separately, the National House Buyers Association (HBA) said there are parties who claimed that the Federal Court decision is detrimental to the housing industry and could cripple the building of new properties.

"If developers feel that they cannot complete the project within say 36 months (for condominium on residential land), HBA advice is simple, get out of the industry and let someone else who is more capable to take-over your project," HBA honorary secretary-general Datuk Chang Kim Loong said in a statement.

He said advances in building technology has helped to speed up completion.

Chang said there will be a more equal playing field from now on, whereby both parties – the developer and the house buyer – are bound by the terms in the SPA.

"House buyers are only asking for the terms in the SPA to be followed and nothing more," he said.

He said house buyers would be better protected and would have more confidence when buying new properties knowing that the property will be completed on time.

"This is positive for the property industry," he said.

By large, most housing projects can be completed within the stipulated time period and only a small portion of housing projects were granted this arbitrary extension of time, Chang said.