

Headline	What should developers do moving forward?		
MediaTitle	The Edge		
Date	25 Jan 2021	Color	Full Color
Section	Corporate	Circulation	25,910
Page No	21	Readership	77,730
Language	English	ArticleSize	193 cm <sup>2</sup>
Journalist	N/A	AdValue	RM 3,323
Frequency	Weekly	PR Value	RM 9,969



## What should developers do moving forward?

In a Legal Alert dated Jan 22, Zico says, "Since the decision of the Federal Court stemmed from strict compliance with legislation, it would be prudent for developers to adhere strictly to Regulation 11(2) of the Housing Developers (Control and Licensing) Regulations 1982, and stop collecting booking fees, either through themselves, their agents or even their solicitors. This would appear to also include any form of expression of interest, even without payment of any sort.

"From a commercial standpoint, this may not be the best option for developers as developers depend largely on the market outlook from the purchasers' written intention to purchase, or "offer to purchase" as it is commonly known as.

"However, the law as it stands now clearly prohibits any form of expressions of interest. As such, developers will have no choice but to review their financial standings and consult with market experts before embarking on a new project.

This would be the preferred option rather than getting hauled to court and slapped with hefty fines and damages," says the note, written by partners in the firm Angeline Cheah and Patricia Chia.

In the event the developers still insist on collecting booking fees or any sort of payment in contravention of Regulation 11(2) of the Regulations, they would have to bear in mind that if there is a delay in delivering vacant possession in accordance with the statutory

contracts, the calculation of LAD will run from the date any payment is collected, if it is earlier than the date the sale and purchase agreement was signed.

"With this new settled law, it is to be seen how it will be implemented and interpreted by the courts moving forward, and more pertinently, whether it will open up a floodgate of litigation," the Legal Alert adds.

"The law in relation to housing developers is clearly for the benefit

of the purchasers, and that has always been the intention for consumer laws. As they say, the customer is always right! This may not always be the correct sentiment but unfortunately, the legal maxim of 'caveat emptor' or 'let the buyer beware' is not applicable in this situation. With this new and final development by the courts, developers have no choice but to comply with Regulation 11(2) or be prepared to face the consequences." 