

**IN THE HIGH COURT OF MALAYA IN SHAH ALAM
IN THE STATE OF SELANGOR DARUL EHSAN, MALAYSIA
[CIVIL SUIT NO: BA-22NCvC-244-06/2021]**

BETWEEN

- 1. BLUE GREEN NETWORK SDN BHD
[COMPANY NO. 744873-A]**
- 2. NG WEE ONG
[IDENTITY CARD NO. : 721108-01-5643]**
- 3. HO HUI PING
[IDENTITY CARD NO. : 720611-01-5558]**
- 4. S. LATHA DEVI K P RAJASEKHARAN
NAYAR
[IDENTITY CARD NO. : 640531-10-6986]**
- 5. CHONG KIM LAN
[IDENTITY CARD NO. : 671001-10-5208]**
- 6. CHAN SIEW LEONG
[IDENTITY CARD NO. : 750227-10-5767]**
- 7. LAI YIN KENG
[IDENTITY CARD NO. : 760628-14-5224]**
- 8. LUM WEN FOO
[IDENTITY CARD NO. : 700921-08-6257]**
- 9. KOOK WAI YING
[IDENTITY CARD NO. : 760809-14-5530]**
- 10. LOW YEONG TAKE
[IDENTITY CARD NO. : 810607-14-5121]**
- 11. HEW LAI KENG**

- [IDENTITY CARD NO. : 820108-14-5580]
12. LEE HON LIU
[IDENTITY CARD NO. : 911002-14-6044]
13. WONG SIEW LING
[IDENTITY CARD NO. : 851028-14-5902]
14. NG KUM CHIN
[IDENTITY CARD NO. : 800206-04-5091]
15. LIM POH TIN
[IDENTITY CARD NO. : 730422-08-5070]
16. WONG KUM THONG
[IDENTITY CARD NO. : 570601-08-6183]
17. NG YAT SENG
[IDENTITY CARD NO. : 761214-08-5967]
18. LENG BOON CHEN
[IDENTITY CARD NO. : 760204-01-6306]
19. CHONG HOONG KIN
[IDENTITY CARD NO. : 901122-10-5889]
20. KOR YOKE YAN
[IDENTITY CARD NO. : 900422-14-6004]
21. YEOH KOK HUA @ YEOH SENG
CHOON
[IDENTITY CARD NO. : 690317-07-5379]
22. KOO CHIN HOON
[IDENTITY CARD NO. : 880905-10-5180]
23. YIO LIM CHOONG
[IDENTITY CARD NO. : 860215-56-5181]

24. **PHYLICIA YEO YEE SIEN**
[IDENTITY CARD NO. : 860122-14-5540]
25. **NG KAI HUAI**
[IDENTITY CARD NO. : 790914-01-5903]
26. **NG SHIR LEY**
[IDENTITY CARD NO. : 891209-04-5042]
27. **TAN POH LIAN**
[IDENTITY CARD NO. : 590312-04-5236]
28. **WOON OI LIAN**
[IDENTITY CARD NO. : 780606-10-5510]
29. **LEE LAY HUA**
[IDENTITY CARD NO. : 830514-10-5874]
30. **KUAN PEK CHENG**
[IDENTITY CARD NO. : 740329-14-5808]

... PLAINTIFFS

[Plaintif-Plaintif memulakan dan membawa tindakan perwakilan ini menyaman dalam kapasiti peribadi dan sebagai seorang wakil kepada kesemua tiga puluh (30) Plaintiff-Plaintif/ Pembeli-Pembeli hartanah dalam projek pemajuan perumahan yang dikenali sebagai “Sky Condominium” / “Skyz Residence” menurut peruntukan undang-undang yang ditetapkan iaitu Aturan 15 Kaedah 12 Kaedah-Kaedah Mahkamah 2012]

AND**PILIHAN MEGAH SDN BHD**
[COMPANY NO. : 195631-P]**... DEFENDANT**

GROUND OF JUDGMENT (2)**(Purchasers' Action for Liquidated Damages against Development)**

- [1] The Plaintiffs, a group of purchasers of residential property units in a housing development project, filed this suit against the Defendant-developer for liquidated damages for late delivery of vacant possession of the residential units, liquidated damages for late completion of the common facilities and other claims and reliefs in connection with alleged delay in the application for and issuance of strata titles for their strata residential properties.
- [2] On 13 March 2023 this Court pursuant to O.14A, O.33 r.2 and O.34 directed that the parties shall file and exchange submissions on the questions of law stated by the Court and also gave liberty for the parties to propose such other or additional questions of law and/or of mixed fact and law for preliminary trial and disposal.
- [3] Both parties filed and exchanged their proposed questions of law and/or of mixed fact and law for preliminary trial and disposal pursuant to O.14A read with O.33 r.2 and O.34.
- [4] After having considered and included the parties' proposed questions, this Court on 21 March 2023 sent to the parties the combined questions of law and questions of mixed fact and law which include this Court's proposed questions as well as the parties' proposed questions.
- [5] The parties filed and exchanged their written submissions on answering the questions of law on or about 22 April 2023 and thereafter their respective submissions-in-reply on or about 10 May 2023.
- [6] On 15.5.2023, this Court made the decision on answers to the questions of law and identified the balance questions of mixed fact and law to be tried. Case management directions were issued for the parties to address the Court on the order on quantum of liquidated

damages that should be made consequent upon the answers to the questions of law and on the trial of the balance questions of mixed fact and law. The parties were then directed to submit on the quantum of liquidated damages that should be made consequent upon the answers to the questions of law.

- [7] On or about 31 May 2023 the parties filed and exchanged their respective submissions on the quantum of liquidated damages that should be made consequent upon the answers to the questions of law.
- [8] In the case management session on 2 June 2023, the Plaintiffs' counsel informed this Court that the Plaintiffs would proceed with the claims for liquidated damages only but they withdraw their claims on alleged delay in the application for and issuance of strata titles. It was also the common position of the parties that with such withdrawal of the Plaintiffs' claims on alleged delay in the application for and issuance of strata titles, there was no balance question of fact or mixed fact and law which required a *viva voce* trial.
- [9] After considering the further submissions of the respective parties, this Court on 12 June 2023 awarded in favour of the Plaintiffs (excluding the 2nd and 3rd Plaintiffs who had withdrawn their claims) **RM1,778,360.17** as the total combined amount of liquidated damages for late delivery of vacant possession of residential units and late completion of common facilities, plus interests and costs and also dismissed the Defendant's counterclaim against the Plaintiffs. The Plaintiffs' claims for further damages for alleged delay in the application for and issuance of strata titles were also struck out with no liberty to file afresh, as they have withdrawn such further claims.
- [10] By Notice of Appeal dated 12 June 2023, the Defendant-developer has appealed against part of this Court's decision dated 15 May 2023 which held that the Plaintiffs were entitled to claim liquidated

damages for delay which was to be computed 36 months from the date of payment of deposit or booking fee until the date of delivery or deemed delivery of vacant possession and completion of the common facilities and which also dismissed the Defendant-Developer's counterclaim for exemplary damages against the Plaintiffs.

- [11] In early July 2023, this Court has provided the full Grounds of Judgment dated 26 June 2023 for the entirety of this Court's decisions in response to the Defendant's Notice of Appeal dated 12 June 2023. The said Grounds of Judgment dated 26 June 2023 was uploaded in the Court CMS2 system as Enclosure 95 on 4 July 2023.
- [12] By a second Notice of Appeal dated 6 July 2023 the Defendant has filed another appeal against this Court's decision dated 12 June 2023.
- [13] As this Court's Grounds of Judgment dated 26 June 2023 in Enclosure 95 has encompassed all the points and issues for decisions, including the points and issues stated in the Defendant's second Notice of Appeal dated 6 July 2023, this Court does not propose to repeat another set of Grounds of Judgment for this matter.
- [14] For clarification, this Court confirms that the Grounds of Judgment dated 26 June 2023 in Enclosure 95 apply to both the Defendant's first Notice of Appeal dated 12 June 2023 and the Defendant's second Notice of Appeal dated 6 July 2023.

Dated: 20 JULY 2023

(TEE GEOK HOCK)
JUDGE
HIGH COURT OF MALAYA AT SHAH ALAM
(NCvC 10)

Counsel:

For the plaintiffs - Harneshpal Singh Chandini Anatha Krishnan; M/s Lui & Bhullar

For the defendant - Thoo Yee Huan; M/s Halim Hong & Quek