



There have been rapid developments in judicial determination of housing laws in Malaysia in recent years. From recent cases, the interpretation of housing laws has skewed towards increased protection for homebuyers.

In the recent High Court case of *Dua Residency Management Corporation v Edisi Utama Sdn Bhd [2021] MLJU 140* (“**Dua Residency**”), the High Court was asked to decide on the issue of whether the management corporation of a condominium (“**Management Corporation**”) could bring an action against the developer of the condominium (“**Developer**”) for, amongst others, negligence predicated on defects and workmanship in several parts of the condominium.

The High Court held that the Management Corporation could sue the Developer for negligence as there was sufficient proximity between the Management Corporation and the Developer to find that the Developer owes a duty of care to the Management Corporation. The decision in *Dua Residency* raises a novel point of law. Traditionally, homebuyers would bring an action individually against developers to rectify defects or for failing to construct the condominiums with good workmanship or materials.

The High Court noted that while a contractual remedy exists for the homebuyers, this would be impractical as it would require all the homebuyers to institute a civil action. Instead, the Court accepted that from a practical point of view, the Management Corporation represents the collective homebuyers since the management and maintenance of the condominium are directly under the Management Corporation’s care.

Duty of Care

The *Dua Residency* decision now imposes an additional duty of care on developers to a Management Corporation of a condominium or stratified property, to ensure that the property has been constructed with good workmanship and in accordance with the agreed specification and approved plans in the sale and purchase agreements.

The decision in *Dua Residency* potentially raises several issues. A Management Corporation acts on a majority whereby a motion is made at a general meeting and passed with a majority vote. Should a motion be passed by the majority for the Management Corporation to commence legal action against the developer, what then would be the rights of the minority who opposed the motion? The minority would essentially be brought into a legal suit which they have no intention to commence or without their express consent.

A Class Action?

The decision in Dua Residency would be binding on all the homebuyers irrespective of whether the homebuyers are part of the majority or minority. A judgment pronounced in a representative capacity is equally binding on all the parties being represented i.e. all the homebuyers which the Management Corporation sought to represent. Whilst the decision of Dua Residency did not specifically deal with the issue of class actions, some may argue that the outcome in Dua Residency could be akin to a representative or class action claim.

Contrast this with the traditional approach whereby homebuyers would knowingly and willingly commence an action against the developer directly. The issue of the minority acquiescing or being bound by a judgement they had not sought to be a part of would not have arisen.

The decision of Dua Residency could also potentially open the floodgates to frivolous civil suits brought against developers. The majority of homebuyers could come together to compel the Management Corporation to commence frivolous suits against developers. The majority could also mean only the majority of owners that were present during the general meeting.

Whilst the prospect of a representative action against a developer may seem alluring at first glance, it may not be as sweet as it seems. As with all litigation, it is possible that homebuyers, having succeeded in their claim, would still end up with a paper judgment. The corporate entity that developed the stratified property may be insolvent. The Management Corporation, having utilised the collective fund to commence legal action, may end up being detrimental to the homebuyers instead. The minority who opposed the commencement of the civil suit would also have to bear the costs as the Management Corporation acts as a representative for all the homebuyers.

Nevertheless, how would this decision affect property developers in the future? Property developers would now have to consider not only their contractual obligations to the homebuyers but also their duty of care owed to the Management Corporation of the condominium or stratified property.

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