

Homebuyer's Rights and Obligations Booklet
By Messrs Lui & Bhullar
(Edition 1: As of 23rd October 2024)

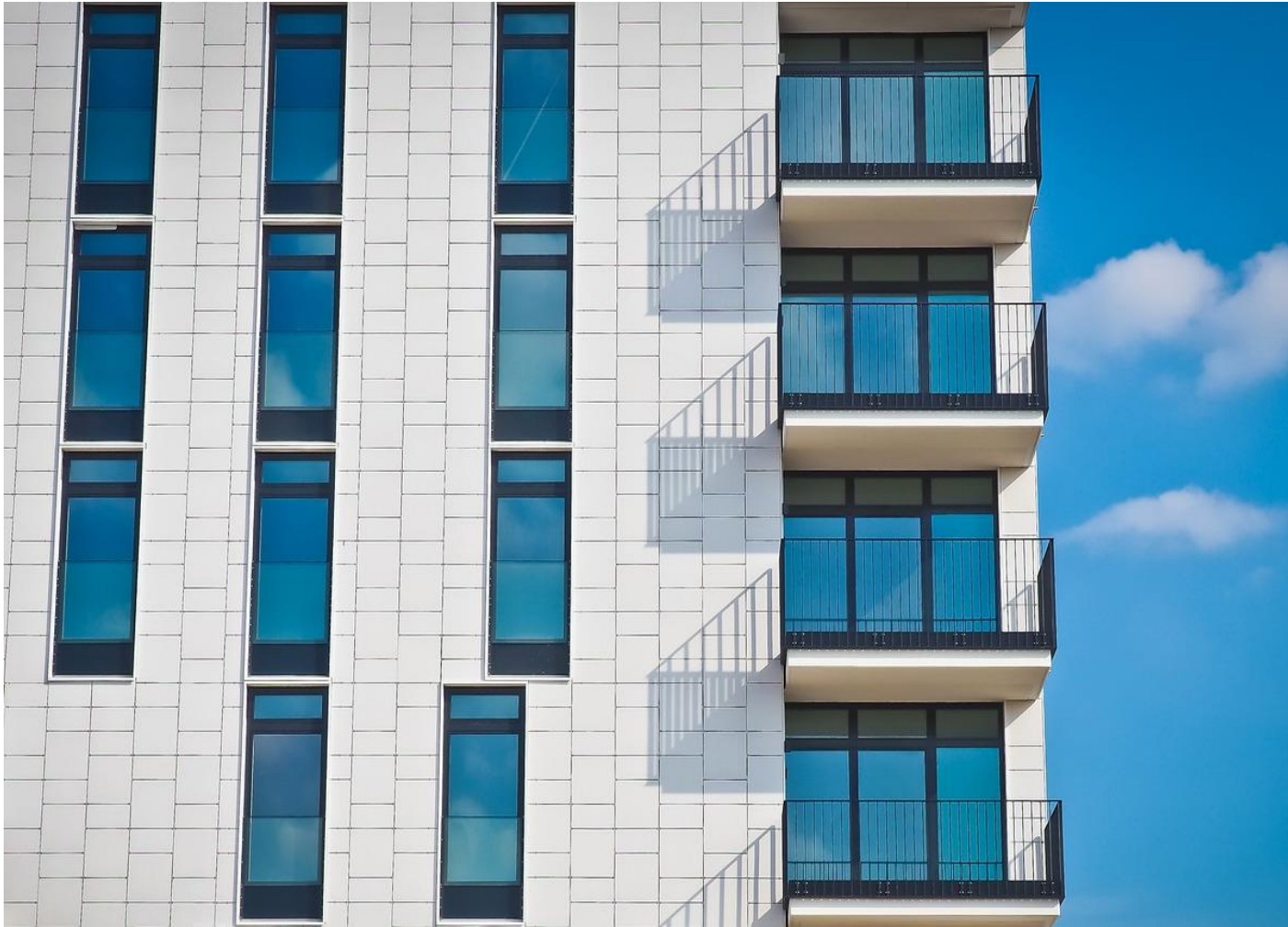


Table of Contents

1. Intro by Messrs Lui & Bhullar
2. Collection of Vacant Possession and Checklist
 - 2.1 What is Vacant Possession (VP)?
 - 2.2 Understanding Your Rights at the Point of VP
 - 2.3 Inspection Checklist for Vacant Possession
 - 2.4 Liquidated Ascertained Damages (LAD) and Delays in Vacant Possession (VP)
 - 2.4.1 What is Liquidated Ascertained Damages (LAD)?
 - 2.4.2 How to Calculate LAD
 - 2.4.3 Common Causes of Delay Leading to LAD
 - 2.5 How to Claim for LAD
 - 2.6 Conclusion and Key Takeaways
3. Misrepresentation by Developers and Comparison Between Marketing Materials and Actual Unit
 - 3.1 What is Misrepresentation?
 - 3.2 Common examples of Misrepresentation
 - 3.3 Misrepresentation in Sales Contracts and Verbal Assurances
 - 3.4 Comparing Marketing Materials with the Actual unit Delivered
 - 3.5 Legal Recourse for Misrepresentation
 - 3.6 Conclusion and Key Takeaways
4. The Importance of Completing the POT and MOT Process Timely
 - 4.1 What is Perfection of Transfer (POT)
 - 4.2 What is memorandum of Transfer (MOT)
 - 4.3 Why Completing POT and MOT Timely is Important
 - 4.4 Real-Life Examples of POT and MOT Issues
 - 4.5 Steps to Avoid Delays in POT and MOT
 - 4.6 Conclusion and Key Takeaways
5. Defects Checklist and What to Be Aware
 - 5.1 Identifying defects
 - 5.2 Legal Recourse for Defects
 - 5.3 Real Life Case Study
 - 5.4 Conclusion and Key Takeaways
6. Concluding Remarks by the Managing Partners of Messrs Lui & Bhullar
 - 6.1 Recap of Key Points
 - 6.2 Resources for Homebuyers

Chapter 1: Introduction by Messrs Lui & Bhullar

1.1. Welcome and Overview

As an established legal practitioners in Malaysia, **Messrs Lui & Bhullar** have dedicated themselves to advocating for homebuyers, ensuring their rights are protected throughout the property purchasing process. This introduction outlines our mission to empower buyers through knowledge and legal support, particularly concerning issues of misrepresentation, delays in vacant possession, and defects in newly purchased properties.

Buying a home is one of the most significant investments many people will make in their lifetime. However, it is also a process filled with potential legal complexities, uncertainties, and challenges. As a homebuyer, it is essential to not only understand your rights but also be fully aware of your obligations throughout the entire transaction process. The purchase of a property involves several stages, from signing the Sales and Purchase Agreement (SPA) to completing the legal formalities like Perfection of Transfer (POT) and Memorandum of Transfer (MOT). Each stage is critical to ensure your investment is secure and legally binding.

Unfortunately, many homebuyers are unaware of the potential pitfalls they may encounter, such as misrepresentations by developers, delays in the completion and delivery of their units, and construction defects that diminish the value of the property. Understanding your rights at each stage of the process can safeguard you from unnecessary legal disputes, financial losses, and frustration. Furthermore, being informed about your legal recourse should anything go wrong can empower you to take the necessary steps to protect your interests.

At **Messrs Lui & Bhullar**, we are committed to providing homebuyers with the legal knowledge and resources they need to navigate the often-complicated property purchase process. Alongside **VacantPossession.com**, we have prepared this booklet to guide you through the critical areas of your rights and obligations as a homebuyer. This booklet is designed to be a practical, easy-to-understand resource that will help you make informed decisions at every step of your property purchase journey.

What You Will Learn in This Booklet

In this booklet, we will address some of the most common concerns and legal issues that homebuyers in Malaysia may face. It is structured to take you through each stage of the home-buying process, starting from the collection of vacant possession (VP) of your property, all the way through to identifying and rectifying defects, and completing the necessary legal formalities like POT and MOT.

Here is a brief overview of what you can expect to learn:

1. **Vacant Possession and Checklist** – When the time comes to collect the keys to your new property, you need to be aware of what you should check for to ensure that the property is delivered as promised. This includes understanding your right to inspect the property, claim for any defects, and ensure all necessary amenities are in place. We will also cover **Liquidated Ascertained Damages (LAD)**, which compensates buyers when developers fail to deliver vacant possession on time.
2. **Misrepresentation by Developers** – We will explore how to identify discrepancies between the marketing materials presented by developers and the actual unit delivered. If there are significant differences, such as in the size of the unit, the quality of finishes, or missing amenities, buyers may be entitled to legal recourse. We will guide you on how to address such misrepresentations and pursue compensation or remedies.

3. **Perfection of Transfer (POT) and Memorandum of Transfer (MOT)** – Completing the POT and MOT is a crucial part of the property purchase process. Delaying or neglecting this process can expose buyers to future legal risks. We will explain why it is important to complete these formalities promptly and outline the steps involved in the process.

4. **Defects in the Property** – After taking possession of your property, it is common to discover defects such as structural issues, poor workmanship, or substandard materials. Knowing how to identify and document these defects is essential, as is understanding your rights to have them rectified under the **Defects Liability Period (DLP)**. This chapter will provide you with a detailed checklist of common defects to look out for and how to initiate the defect rectification process with the developer.

Your Rights as a Homebuyer

Homebuyers in Malaysia are protected by several laws and regulations, primarily governed by the **Housing Development (Control and Licensing) Act 1966** and the **Sales and Purchase Agreement (SPA)**. These laws set out the rights and responsibilities of both developers and buyers, ensuring that developers are held accountable for delivering the property according to the terms of the contract. As a buyer, you have the right to:

- **Receive the property as per the agreed terms** – This includes the size, layout, finishes, and facilities promised by the developer.
- **Inspect the property for defects** – Upon receiving vacant possession, you are entitled to inspect the unit for defects and have them rectified within the stipulated defects liability period.
- **Compensation for delays** – If the developer is late in delivering vacant possession, you have the right to claim LAD.
- **Legal recourse in case of misrepresentation** – If there are discrepancies between what was promised in the marketing materials and what was delivered, you can pursue legal action for misrepresentation.

Your Obligations as a Homebuyer

While you are protected by law, it is also essential to fulfill your obligations as a homebuyer to ensure a smooth and legally compliant property transaction. These obligations include:

- **Timely payment** of the purchase price as stipulated in the SPA.
- **Ensuring that all legal formalities** such as the POT and MOT are completed in a timely manner.
- **Cooperating with the developer** in the defect rectification process by promptly reporting any defects found in the unit.
- **Adhering to the terms of the SPA**, including complying with any rules or regulations governing the use of common facilities in strata-titled properties.

Empowering You with Knowledge

This booklet aims to equip you with the knowledge you need to protect your rights and fulfill your obligations as a homebuyer. By understanding the key legal aspects of the property purchase process, you can avoid common pitfalls, reduce the risk of disputes, and ensure that your investment is safeguarded.

At **Messrs Lui & Bhullar** and **VacantPossession.com**, we believe that every homebuyer deserves to have their rights protected. This booklet serves as part of our ongoing effort to provide valuable resources to homebuyers in Malaysia, ensuring they have access to legal advice and support at every stage of their home-buying journey.

We hope this booklet will serve as a valuable guide for you, whether you are a first-time homebuyer or an experienced property investor. Should you require further assistance or legal advice, our team of experts is here to help.

1.2. Why This Booklet?

The "**Homebuyer's Rights and Obligations**" booklet serves as a comprehensive resource for understanding the complexities of property law in Malaysia. It addresses common pitfalls homebuyers face, equipping them with the knowledge to navigate their rights effectively.

Chapter 2: Collection of Vacant Possession (VP) & Checklist

2.1. What is Vacant Possession (VP)?

Vacant possession (VP) is a critical milestone in the property buying process. It refers to the state where the buyer can take physical ownership of the property, free from any encumbrances or previous occupants. When collecting VP, buyers should ensure that the property is not only accessible but also habitable and in accordance with the terms specified in the Sales and Purchase Agreement (SPA).

Legal Definition

Under Malaysian law, the legal definition of VP encompasses that the property should be delivered free from defects, fully functional, and meet the stipulated conditions in the SPA. If the property fails to meet these conditions, buyers may refuse to accept VP and demand rectification.

2.2. Understanding Your Rights at the Point of VP

At the point of VP, homebuyers have specific rights that protect them from accepting a property that does not meet the promised standards. Buyers must be vigilant and should not hesitate to assert their rights if the property is defective.

Also keeping in mind that VP must be accompanied by the **Certificate of Completion and Compliance (CCC) / Borang F** which certifies that the development and the unit is safe and fit for occupation.

Example:

A buyer entered a new housing development and was eager to collect VP. However, upon inspection, they discovered that the electrical wiring was not installed correctly, creating a safety hazard and the CCC / Borang F has yet to be issued. They contacted Messrs Lui & Bhullar, who advised them to formally refuse VP until the issues were resolved, ensuring the buyer's safety and legal rights were upheld.

2.3. Inspection Checklist for Vacant Possession

Before accepting VP, it is essential for buyers to conduct a thorough inspection of the property. The following checklist includes critical areas to assess:

Certifications

- Ensure that the developer has obtained the required certifications required to issue VP, such as the CCC/ Borang F.

Structural Integrity

- Inspect for cracks in walls and ceilings.
- Check the foundation and overall stability of the property.

Electrical Systems

- Verify all electrical outlets are functional.
- Ensure the circuit breaker is operational and safe.

Plumbing Fixtures

- Inspect all faucets, toilets, and drainage systems for leaks.
- Check the water heater and ensure it is functioning properly.

Windows and Doors

- Test all windows and doors for functionality.
- Ensure locks are secure and operational.

Exterior Condition

- Check the roof for any leaks or damages.
- Inspect the exterior walls and landscaping.

Example:

During an inspection, a buyer discovered that the developer do not have the CCC / Borang F. Also, several windows did not close properly, and there were significant water stains on the ceiling, indicating possible leaks. By using a comprehensive checklist, the buyer was able to document these defects and formally refuse acceptance of VP.

2.4. Liquidated Ascertained Damages (LAD) and Delays in Vacant Possession (VP)

2.4.1. What is Liquidated Ascertained Damages (LAD)?

Liquidated Ascertained Damages (LAD) refer to the predetermined amount specified in a contract that a developer must pay to the buyer in the event of a delay in delivering vacant possession of the property. This financial penalty is a safeguard for buyers, ensuring they receive compensation for the inconvenience and potential financial loss caused by such delays.

Legal Framework:

Under the Housing Development (Control and Licensing) Act 1966, developers are obligated to adhere to timelines for delivering VP. If these timelines are not met, buyers are entitled to claim LAD, which is often calculated on a daily basis for each day of delay beyond the agreed completion date.

2.4.2. How to Calculate LAD

Calculating LAD involves determining the daily rate specified in the Sales and Purchase Agreement (SPA) and multiplying it by the number of days of delay. Typically, the formula is:

$$\text{LAD} = \text{Daily Rate} \times \text{Number of Days of Delay}$$

Example Calculation:

Suppose the SPA states that the daily rate for LAD is RM 100, and the developer delays VP by 30 days. The calculation would be:

$$\text{LAD} = \text{RM } 100 \times 30 = \text{RM } 3,000$$

For convenience, buyers can also use the LAD calculator available at

[www.luibhullar.com/ladcalculator](<http://www.luibhullar.com/ladcalculator>).

This online tool can assist buyers in quickly calculating the potential damages owed to them by simply entering the necessary details.

Using the LAD Calculator:

- Input the agreed completion date from your SPA.
- Enter the date you actually received vacant possession.
- The calculator will automatically compute the total LAD owed based on the daily rate outlined in your contract.

2.4.3. Common Causes of Delay Leading to LAD

Understanding the common causes of delays can help buyers anticipate potential issues and take proactive measures:

Construction Delays:

Adverse weather conditions, supply chain disruptions, or labor shortages can all contribute to delays.

Regulatory Issues:

Delays in obtaining necessary approvals or inspections from local authorities can also result in a late delivery of VP.

Example:

A buyer faced a three-month delay in receiving vacant possession due to the developer's failure to secure final inspection approvals. As a result, the buyer utilized the LAD calculator to determine the compensation they were entitled to claim.

2.5. How to Claim for LAD

If a developer is late in delivering vacant possession, buyers must follow specific steps to claim LAD:

1. Document the Delay:
 - Keep thorough records of all correspondence with the developer regarding the expected and actual dates of VP.
 - Obtain official documentation from the developer confirming the delay.
2. Review the Sales and Purchase Agreement (SPA):
 - Check the SPA for clauses related to LAD, including the daily rate and any stipulations for claiming LAD.
3. Send a Formal Demand Letter:
 - Draft a formal letter to the developer requesting payment of LAD, citing the specific clauses in the SPA.
 - Include evidence of the delay and the calculated LAD amount.

Sample Demand Letter Template:

[Your Name]
[Your Address]
[Date]

[Developer's Name]
[Developer's Address]

Subject: Claim for Liquidated Ascertained Damages (LAD)

Dear [Developer's Name],

I hope this message finds you well. I am writing to formally claim Liquidated Ascertained Damages (LAD) as stipulated in our Sales and Purchase Agreement (SPA) dated [Insert Date].

As per our agreement, the expected date of vacant possession for the property located at [Property Address] was [Expected Date]. However, I did not receive vacant possession until [Actual Date], resulting in a delay of [Number of Days] days.

According to the terms of the SPA, the daily rate for LAD is RM [Daily Rate]. Therefore, the total amount of LAD I am claiming is RM [Total LAD Amount].

Please arrange for the payment of this amount by [Specify Date], as required by the agreement.

Thank you for your prompt attention to this matter.

*Sincerely,
[Your Name]*

4. Seek Legal Assistance:

- If the developer does not respond or refuses to pay, it may be necessary to consult with legal professionals, such as Messrs Lui & Bhullar, to explore further actions, including filing a formal claim in court if necessary.

Example:

A buyer experienced a significant delay and followed the above steps meticulously. After sending a demand letter, the developer initially resisted paying LAD. However, upon receiving legal counsel from Messrs Lui & Bhullar, the developer complied and paid the claim.

2.6. Conclusion and Key Takeaways

Understanding the intricacies of the vacant possession process, including the implications of LAD, is vital for homebuyers. This chapter emphasizes the importance of:

- Conducting thorough inspections before accepting VP.
- Being aware of your rights regarding LAD and the potential for compensation in cases of delay.
- Following the appropriate steps for documenting delays and claiming LAD effectively.

By arming themselves with this knowledge, homebuyers can protect their interests and ensure a smoother transition into their new homes.

Chapter 3: Misrepresentation by Developers and Comparison Between Marketing Materials and Actual Unit

Misrepresentation occurs when a developer provides false or misleading information to buyers during the property purchasing process. This can take the form of exaggerated claims, false promises, or discrepancies between what was advertised and what is delivered. In the context of property development, buyers often rely on brochures, marketing materials, show units, and verbal assurances from the developer. If these representations turn out to be untrue or inaccurate, buyers may have legal grounds to claim for misrepresentation.

3.1. What is Misrepresentation?

Misrepresentation is defined as the presentation of false or misleading information that induces a buyer to enter into a contract. In property transactions, developers may use marketing materials, verbal statements, or promotional brochures to attract buyers. However, if these representations do not reflect the final delivered product, buyers may have been misled and can potentially seek recourse.

There are three main types of misrepresentation:

1. **Fraudulent Misrepresentation** – When a developer knowingly provides false information to deceive buyers.
2. **Negligent Misrepresentation** – When a developer carelessly provides inaccurate information without verifying its truthfulness.
3. **Innocent Misrepresentation** – When a developer unknowingly provides incorrect information but without any intent to deceive.

3.2. Common Examples of Misrepresentation by Developers

Example 1: Size of the Unit

(Developers often promote properties based on their square footage. However, in some cases, the actual size of the delivered unit may be smaller than what was advertised in the marketing materials.)

Scenario: A buyer purchased a condominium unit based on the developer's brochure, which advertised the unit as having 1,200 square feet of living space. Upon receiving vacant possession, the buyer measured the unit and discovered it was only 1,000 square feet, falling short by 200 square feet. This discrepancy represents a case of misrepresentation where the buyer was misled into thinking they were purchasing a larger unit.

Legal Recourse: The buyer in this case may be able to claim compensation for the difference in size, or in some cases, may have the right to rescind the contract and demand a refund, depending on the severity of the misrepresentation.

Example 2: Quality of Finishes

(Marketing brochures and show units often depict premium finishes such as high-quality flooring, branded kitchen appliances, and luxurious bathroom fixtures. However, when the unit is delivered, the materials used may be of lower quality than what was promised.)

Scenario: A buyer viewed a show unit that featured marble flooring, top-of-the-line kitchen appliances, and designer bathroom fittings. These finishes were one of the key reasons the buyer decided to purchase the unit. However, upon collecting vacant possession, the buyer found that the flooring was basic ceramic tiles, the kitchen appliances were of a budget brand, and the bathroom fixtures were of inferior quality.

Legal Recourse: The buyer may claim for misrepresentation and seek damages for the difference in value between what was promised and what was delivered. In some cases, the buyer may request the developer to replace the inferior materials with the promised high-quality finishes.

Example 3: Facilities and Amenities

(Developers often promote residential projects by highlighting luxurious facilities such as swimming pools, gyms, and rooftop gardens. However, some of these amenities may be missing or significantly scaled down when the project is completed.)

Scenario: A developer advertised a new condominium project with a rooftop garden, infinity swimming pool, and fully equipped gym as part of its sales pitch. This attracted many buyers who were looking for a high-end lifestyle. However, upon completion of the project, buyers discovered that the rooftop garden was significantly smaller than what was advertised, the infinity pool was replaced with a regular pool, and the gym was only partially equipped.

Legal Recourse: The buyers in this case may argue that they were induced to purchase the property based on the representations of these premium amenities. If the delivered facilities do not match what was promised, the buyers may have grounds to claim compensation or seek specific performance (i.e., require the developer to build the promised amenities).

Example 4: View from the Unit

(One common selling point for developers is the promise of a scenic view, such as an unobstructed sea view, a skyline view, or a park view. However, after the completion of the project, buyers may find that their unit faces a construction site or another building, obstructing the promised view.)

Scenario: A buyer was shown a brochure and 3D rendering depicting an ocean-facing apartment with unobstructed views. The buyer purchased the unit with the expectation of enjoying a scenic sea view. However, upon receiving vacant possession, the buyer discovered that a new high-rise development had been built directly in front of their unit, completely obstructing the view.

Legal Recourse: In such cases, buyers may claim misrepresentation if they can prove that the view was a key factor in their purchasing decision. They may be entitled to compensation for the diminished value of the property or potentially seek to unwind the purchase.

Example 5: Property Layout and Room Configuration

(Show units and marketing materials often depict spacious and well-designed layouts. However, the final unit delivered may have different room configurations or reduced ceiling heights, affecting the overall living experience.)

Scenario: A developer marketed a townhouse project with an open-plan living and dining area, spacious bedrooms, and high ceilings. When the buyer received vacant possession, they discovered that the layout was different from the show unit, with smaller rooms and lower ceilings. This altered the entire experience of the property and was not what the buyer had expected based on the marketing materials.

Legal Recourse: The buyer may argue that they were misled by the developer's representations regarding the layout and room configuration. The buyer may seek compensation for the reduced value of the property or request modifications to the unit to match what was promised.

3.3. Misrepresentation in Sales Contracts and Verbal Assurances

In addition to misrepresentation in marketing materials, buyers may also encounter situations where the developer makes verbal promises or includes clauses in the Sales and Purchase Agreement (SPA) that turn out to be misleading.

Example 6: Verbal Assurances of Completion Date

(Developers sometimes provide verbal assurances to buyers about the project's completion date. Buyers may be told that the project will be delivered earlier than the contractual deadline. However, if the project is delayed, buyers may find themselves in a difficult situation.)

Scenario: A buyer was verbally assured by the developer's sales representative that the project would be completed six months ahead of schedule. Based on this assurance, the buyer made arrangements to sell their existing home and move into the new unit. However, the project was delayed by a year, causing the buyer significant inconvenience and financial loss.

Legal Recourse: The buyer may claim for misrepresentation if they can prove that the developer's verbal assurances induced them to make financial or lifestyle decisions that they would not have made otherwise. However, verbal assurances are harder to prove, so it is essential for buyers to document any such promises in writing.

3.4. Comparing Marketing Materials with the Actual Unit Delivered

To identify misrepresentation, buyers should carefully compare the marketing materials provided by the developer with the actual unit they receive. Key areas to focus on include:

- **Floor Plan:** Ensure that the layout and room sizes match what was advertised.
- **Finishing Materials:** Compare the quality of the flooring, countertops, and other finishes with what was shown in the show unit or brochure.
- **Appliances:** Check whether the appliances provided are of the same brand and quality as promised.
- **Amenities and Facilities:** Verify that the amenities such as pools, gyms, and parks are delivered as advertised.

3.5. Legal Recourse for Misrepresentation

If a buyer believes they have been misled by the developer, they may pursue the following legal options:

- **Damages:** The buyer may seek financial compensation for any losses incurred due to the misrepresentation. This could include compensation for the diminished value of the property, costs of rectifying defects, or other financial losses.
- **Specific Performance:** In certain cases, the buyer may request the court to order the developer to fulfill their promises, such as completing unfinished amenities or rectifying defects in the unit.
- **Rescission:** In some cases, the buyer may be able to rescind the contract, which means that the contract is cancelled, and the buyer is entitled to a refund of their payments.

Example of Successful Misrepresentation Claim: A group of buyers in a high-rise development sued the developer for misrepresentation after discovering that the promised premium finishes and facilities were not delivered. The court ruled in favor of the buyers, awarding them damages and ordering the developer to complete the missing amenities.

In reality, damages and Specific Performance are the more practical and common as compared to rescission. Rescission are less readily awarded by the courts in Malaysia.

3.6. Conclusion and Key Takeaways

Misrepresentation by developers is a serious issue that can lead to significant financial and emotional distress for buyers. It is crucial for homebuyers to:

- Carefully review all marketing materials and the Sales and Purchase Agreement.
- Conduct thorough inspections of the unit and facilities before accepting vacant possession.
- Document any discrepancies between what was promised and what was delivered.
- Seek legal advice if they suspect they have been misled by the developer.

By staying vigilant and informed, homebuyers can protect themselves from falling victim to misrepresentation and ensure they receive the property they were promised.

Chapter 4: The Importance of Completing the POT and MOT Process Timely

4.1. What is POT (Perfection of Transfer)?

The **Perfection of Transfer (POT)** involves legal procedures that formalize the transfer of property ownership. This process is crucial because delays can lead to complications, including the inability to secure financing or sell the property later.

Legal Insights: Discuss the potential legal ramifications of not completing the POT, including the risks of title disputes and complications in future sales.

4.2. MOT (Memorandum of Transfer) Explained

The **MOT** must be executed to formalize ownership. Failure to complete the MOT promptly can hinder the buyer's ability to mortgage the property or sell it in the future.

Detailed Example: A buyer discovered that they were unable to secure a mortgage due to an incomplete MOT. Messrs Lui & Bhullar facilitated the completion of the MOT, ensuring that the buyer could proceed with their financing plans.

4.3 Why Completing POT and MOT Timely is Important

Completing the POT and MOT processes on time ensures that the buyer becomes the rightful and legal owner of the property. Delays in these processes can cause various problems:

1. **Legal Ownership Issues:** If the POT and MOT are not completed, the buyer's name will not appear on the property title, which can complicate future transactions, such as selling or mortgaging the property.
2. **Financial Complications:** Delays in completing these processes can lead to additional costs, such as legal fees, penalties, or interest charges. Moreover, without the MOT, buyers cannot access certain financing options.
3. **Inability to Exercise Ownership Rights:** Without the MOT, the buyer may face issues when trying to modify, renovate, or sell the property, as they are not legally recognized as the owner.

4.4 Real-Life Examples of POT and MOT Issues

Case 1: Delay in Issuance of Strata Title for a Condominium Unit

Scenario: In 2017, a group of condominium buyers in Kuala Lumpur faced significant delays in the issuance of strata titles, leading to complications in their ownership. After waiting for several years post-completion, the strata titles were still not issued, and the buyers could not proceed with the **Perfection of Transfer (POT)**.

Consequences: The buyers were unable to sell or refinance their units as they were not listed as the legal owners. Some buyers who wanted to sell their properties at a profit during a market boom were unable to do so because the ownership was still under the developer's master title. In addition, many faced additional legal costs to push the developer to expedite the issuance of titles.

Resolution: The buyers eventually had to file legal action against the developer for the delay in issuing the strata titles. This case highlights the importance of timely completion of the POT to secure legal ownership.

Case 2: Legal Ownership Issues Due to Uncompleted MOT

Scenario: A buyer in Penang purchased a landed property in 2016 but did not complete the **Memorandum of Transfer (MOT)** process due to financial difficulties and a misunderstanding with the conveyancing lawyer. Although the buyer moved into the property, the developer still held the title. Several years later, when the buyer wanted to sell the house to upgrade to a larger property, they encountered issues.

Consequences: Without the MOT, the buyer could not legally transfer ownership to the new purchaser. This led to a delay in the sale process, and the buyer lost the opportunity to sell at a favorable market price. Additionally, the buyer had to bear additional legal fees and penalties for the delayed transfer process.

Resolution: The buyer eventually completed the MOT, but the delay caused financial loss due to missed selling opportunities. This case emphasizes the need to complete the MOT on time to avoid complications during future transactions.

Case 3: Financial Losses from Delay in POT and MOT Completion

Scenario: A couple bought a high-end apartment in Johor Bahru in 2019. Due to an administrative oversight by the developer, the **Perfection of Transfer (POT)** was delayed, and the buyers were not aware that the process had not been initiated. They intended to refinance the property to fund a new business venture but encountered difficulties.

Consequences: Since the POT and **Memorandum of Transfer (MOT)** had not been completed, the couple was unable to refinance the property as the title was still under the developer's name. The delay cost them several months of potential business revenue as they scrambled to rectify the situation. Moreover, they had to engage additional legal services to ensure the developer expedited the process.

Resolution: After several months and additional legal expenses, the couple finally completed the POT and MOT. However, the delay significantly impacted their business plans and caused financial strain.

Case 4: Delayed MOT Leading to Disputes with Banks

Scenario: A buyer in Klang purchased a property with a loan from a local bank. The buyer delayed the **Memorandum of Transfer (MOT)** process for several months due to misunderstandings about the legal fees involved. During this period, the bank attempted to enforce its rights over the property as security for the loan, which led to a dispute.

Consequences: Since the buyer's name was not yet on the title, the bank experienced complications in executing its rights to the property in the event of default. The buyer was required to settle legal disputes with both the bank and the developer to finalize the MOT. This delay led to increased legal fees and additional penalties from the bank.

Resolution: The buyer eventually completed the MOT after several months of legal disputes, but the delay created financial complications with both the bank and the developer.

4.5. Steps to Avoid Delays in POT and MOT

To avoid these issues, it is important for homebuyers to:

1. **Engage a Competent Conveyancing Lawyer:** Ensure your lawyer is proactive in following up on the issuance of the individual or strata title and the completion of the MOT.
2. **Stay Informed of the Process:** As a buyer, you should regularly check on the status of your property's title issuance and ensure that all documents are submitted on time.
3. **Set Aside Funds for Legal Fees:** Completing the POT and MOT processes involves legal fees and stamp duties. Make sure you have set aside sufficient funds to cover these costs to avoid delays.
4. **Act Promptly:** Once you are notified that the title has been issued, act quickly to complete the necessary steps for the POT and MOT to avoid additional charges or legal complications.

4.6 Conclusion

The timely completion of the **Perfection of Transfer (POT)** and **Memorandum of Transfer (MOT)** is essential to secure your legal ownership of the property. Delays can lead to serious legal, financial, and administrative issues, as shown in the real-life examples above. Engaging a reliable conveyancing lawyer and being proactive in managing the process can help you avoid the pitfalls that many homebuyers face. Make sure to stay informed and act promptly to protect your rights and secure your property.

Chapter 5: Defects Checklist & What to Be Aware Of

Taking possession of a newly purchased home can be both exciting and overwhelming. However, it's essential to approach the process carefully, particularly when it comes to identifying defects. Defects in your home can range from minor issues like surface cracks to major structural problems that can affect your quality of living or the property's value. This chapter provides a comprehensive checklist for identifying defects and offers real-life examples to illustrate common issues faced by homebuyers. Additionally, it provides tips on what to do if defects are found and how to get them rectified.

5.1 Defects Inspection Checklist

When you collect Vacant Possession (VP), the developer is obligated to hand over a property that is in good condition, free from defects. However, this is not always the case, and many homebuyers end up discovering defects after taking possession of their property. Below is a checklist that every homebuyer should follow when inspecting their property:

A. Walls and Ceilings:

- Check for **cracks** on walls and ceilings, particularly near corners, windows, and doors. While hairline cracks might be cosmetic, larger cracks can indicate more severe structural issues.
- Ensure that the **paint** finish is even and free from bubbles, peeling, or discoloration.
- Real-life example: A condominium buyer in Kuala Lumpur discovered large cracks in their unit's living room wall that grew wider over time. Despite initial assurances from the developer, the issue was traced to poor workmanship during construction, and the homeowner had to fight for compensation.

B. Floors:

- Inspect all flooring for **cracks, uneven surfaces, or hollow tiles**. Hollow tiles can crack over time and may need to be replaced.
- Check the **tiling grout** between tiles. It should be even, and no tiles should be loose or moving.
- For wood flooring, ensure there is no **warping, creaking, or gaps** between planks.
- Example: A landed homebuyer in Penang found that several tiles in their living area were hollow and cracked shortly after moving in. The defect was reported, and the developer had to redo the tiling, which took several weeks.

C. Windows and Doors:

- Make sure all **windows and doors** open and close smoothly without obstruction. Test the locking mechanisms to ensure security.
- Check for **gaps** between the windows/doors and their frames that could let in air or moisture.
- Ensure the **seals** around the windows are intact and free from leaks, particularly during rain.
- Real-life example: A homeowner in Johor discovered after a heavy rainstorm that water was seeping through poorly sealed windows, causing water damage to their newly painted walls and flooring. This issue was escalated, and the developer had to reseal all the windows in the affected units.

D. Electrical Systems:

- Test all **electrical outlets** to ensure they are working. Bring a small device like a phone charger to check the functionality.
- Ensure that all **light fixtures** are properly installed and functional.

- Check if the **circuit breaker** is labeled and functioning correctly.
- Example: A couple in Selangor reported that several electrical outlets in their new apartment were not working. Upon further inspection, it was found that some of the wiring had not been completed properly, causing potential safety hazards.

E. Plumbing Systems:

- Run all **taps, showers, and sinks** to check for leaks and proper water pressure.
- Check the **toilets** to ensure they flush properly and that there are no leaks at the base.
- Check for any **damp spots or water stains** under sinks or around the base of fixtures.
- Example: A homeowner in Kuala Lumpur discovered a persistent leak from the bathroom ceiling, which led to mold growth. This was later traced to a faulty plumbing connection in the unit above, resulting in a long dispute with the developer for repairs.

F. Roof and Ceilings:

- Inspect the **roof structure** for leaks, missing tiles, or improper installation. Any water stains on the ceiling can indicate a leak.
- Real-life example: A landed property buyer in Subang Jaya found that during the rainy season, water started dripping from the ceiling in their bedroom. Upon inspection, it was revealed that there were missing roof tiles due to poor construction.

G. Air Conditioning and Ventilation:

- If your home includes **air-conditioning units**, ensure that they are working properly and cooling the room adequately.
- Check for **condensation leaks** or improper installation that could lead to water damage.
- Ensure that proper **ventilation** systems are installed in bathrooms and kitchens.
- Example: A buyer in Cyberjaya faced issues when their air-conditioning units began leaking onto the floor within days of moving in. The drainage pipe installation was found to be faulty and had to be redone.

H. Waterproofing:

- Inspect the **bathrooms and balconies** for signs of **water seepage** or leaks, which could indicate poor waterproofing.
- Real-life example: In a new apartment complex in Shah Alam, several units reported water seeping through bathroom walls into adjacent rooms due to poor waterproofing. Repairs involved redoing the entire bathroom waterproofing system, a costly and time-consuming process for the developer.

I. Exterior and Common Areas:

- For landed properties, inspect the **external walls, garden area, and car porch** for defects such as cracked tiles, peeling paint, or water retention areas.
- For stratified properties like condominiums, inspect the **common areas**, including hallways, lifts, and facilities, for defects. These areas fall under the management of the Joint Management Body (JMB) and should also be maintained properly.
- Real-life example: A condominium purchaser in Petaling Jaya found that the common pool area was cracking and leaking water just months after moving in. The JMB had to coordinate with the developer for repairs under the Defects Liability Period (DLP).

5.2 What to Do If You Find Defects?

If you find defects, the next step is to submit a **Defect Liability Period (DLP) claim**. In Malaysia, developers are usually required to rectify any defects found within a specified **Defect Liability Period** (often 24 months after VP) at no cost to the buyer.

- **Step 1:** Document all defects. Take clear photos and videos of the identified defects, and make detailed notes.
- **Step 2:** File an official complaint with the developer, providing them with the documented evidence.
- **Step 3:** Follow up regularly with the developer to ensure repairs are carried out in a timely manner.
- **Step 4:** If the developer fails to rectify the defects, you can escalate the matter to the Legal System.

5.3 Real-Life Case Study:

In a famous case involving a condominium project in the Klang Valley, several homeowners banded together to file complaints about serious water leakage problems in their units. After months of failed attempts to get the developer to address the issues, the homeowners filed a class action and the court ruled in favor of the buyers, ordering the developer to rectify the defects and provide compensation for damages caused by the leaks.

5.4 Conclusion

Identifying defects and addressing them is a critical step in ensuring that your new home meets the standards promised by the developer. This checklist serves as a guide to help you conduct a thorough inspection and hold the developer accountable for any shortcomings. Whether it's minor cosmetic issues or significant structural defects, it's crucial to act promptly within the Defect Liability Period and ensure that the developer resolves these issues to protect your investment.

By being vigilant and knowing your rights, you can make sure that your home is in the condition it should be when you take possession.

Chapter 6: Conclusion & Resources for Homebuyers

6.1. Recap of Key Points

In the concluding chapter, Messrs Lui & Bhullar will summarize the essential points discussed throughout the booklet, emphasizing the importance of vigilance and informed decision-making in the homebuying process.

6.2. Resources for Homebuyers

This section will provide practical resources for homebuyers, including:

Messrs Lui & Bhullar’s Contact Information: How to reach Messrs Lui & Bhullar for legal advice.

WhatsApp	: +60143000960 / https://api.whatsapp.com/send?phone=60143000960
Phone	: 03-6414-3141
E-mail	: admin2@gmail.com
Website	: www.luibhullar.com
Articles	: www.luibhullar.com/articles
LAD Calculator	: www.luibhullar.com/ladcalculator
VP Collection	: www.luibhullar.com/vpcollection
Events	: www.luibhullar.com/events

Disclaimer: This Homebuyers' Rights Booklet is provided for general informational purposes only and does not constitute legal advice.

While we strive for accuracy, laws and regulations may vary or change, and individual situations may differ.

We provide pro-bono legal consultation for advice tailored to your specific circumstances.

Use of this booklet does not create any attorney-client or advisor relationship.

The publishers are not liable for any actions taken based on the information provided herein.

Copyright Disclaimer: This material is protected by copyright law. Unauthorized reproduction, distribution, or use of any content, including text, graphics, and images, without the express written permission of the copyright holder (Messrs Lui & Bhullar), is strictly prohibited. This content is provided for informational purposes only. Any use or redistribution of this material beyond fair use may violate copyright laws and is subject to legal action. All rights reserved.