



Mediation for Settlement of Business and Environmental Disputes over the Sale And Purchase of Houses in Residential Areas by Property Companies

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Abstract: The activity of buying and selling land and buildings is often considered easy, inexpensive, and safe, which ensures that the housing is ready for occupancy by the buyer. Residential developers offer more advantages to homes for sale such as facilities, accessibility, and supporting utilities to attract customers to buy. Prospective buyers also tend to ignore several aspects of ongoing buying and selling activities such as negotiations, checking ownership documents, agreement documents, as well as the suitability of the main facilities for purchases through credit methods at banks. The accuracy of prospective buyers should be the main focus compared to just looking at the outside appearance of housing or buildings but focusing more on legality. Disputes between developers and users result from offers on housing promotions that do not match reality, such as building specifications, facilities, and housing utilities. The dispute resolution step that is often taken and proposed by default parties is mediation as an alternative to business dispute resolution. This study aims to analyze the form of mediation as an alternative dispute resolution adopted by the parties. The research method used is empirical research with a descriptive method of disputes that occur between developers and consumers.

Keywords: Mediation, Business Dispute, Residence

Received:13 March 2024 **Revised:** 19 May 2024 **Accepted:**16 June 2024

1. Introduction

The purchase of land and building objects is one of the main aspects of a primary need. Building a dream house for everyone will be done in any way to get it. The implementation of housing and housing needs according to Article 19 paragraph (2) of the Law on Housing and Settlements can be carried out by the government, local government, and/or any person to guarantee the right of every citizen to occupy, enjoy, and/or have a decent home in a healthy, safe, harmonious, and orderly environment [1]. The purchase method is used in every transaction, such as purchasing cash, soft cash, or credit through installments at the bank. The main focus is on the interaction between sellers and potential buyers, namely on products or brands. Consumer behavior in choosing and determining the product to be purchased is in many influencing factors. The consumer's behavior is dependent on the interaction with the product or brand, which can be either positive or negative based on situations or events with that interaction [2] consumers can be attracted to a product not only visually, but through all senses and stimulus factors [3].

The determining aspect in choosing a product other than the quality of the product itself, but from the promotion of the product. This is different from buying and selling activities in property products such as land, buildings, houses, or other property products. The activity of buying and selling property products that are often carried out by sellers or developers and prospective buyers or commonly known as users.

Offers in property buying and selling activities are sometimes given by developers with a very impressive appearance to their users, such as land area, house model, visual design, other facilities that are the main structure of the house and other utilities that can be promoted in order to get the main spotlight for prospective users.

Several cases that have led to disputes are broken promises made by developers to users who have bought house assets in housing developed by the developer. The negotiations that took place at the beginning between the developer and the prospective user were to offer the priority of the house being sold, as in one of the cases that occurred between the housing developer PT. Haji Satir Real Estate & Developer for residents of the Antara Residence Makassar housing complex.

Since carrying out housing development activities in 2015, developers have been aggressively selling houses ordered using the indent unit method. Units that have been ordered are bound through a Sale and Purchase Agreement (PPJB) made by a housing developer with an estimated completion of the house construction within two years since the PPJB is signed by the developer and the user as the buyer.

2. Theoretical Overview of the Main Concepts

Buying and selling Housing

A collection of houses as part of a settlement is called housing, in Article 1 Point 2 of the Law on Housing and Settlements, the definition of housing is a collection of houses as part of a settlement, both urban and rural, which are equipped with infrastructure, facilities and public utilities as a result of efforts to fulfill decent housing inhabited [1]. In addition, the legal relationship that exists is between business actors and consumers in residential property. The Consumer Protection Law itself has regulated norms that provide an equal position between business actors and consumers. These norms are at the same time consumer protection norms in legal relations with business actors which according to Shofie are grouped as follows [4].

1. Production and/or trading activities of goods and/or services;
2. Offering, promotion and advertising activities for goods and/or services;
3. Activities of sales of goods and/or services; And
4. Post-transaction activities for the sale of goods and/or services.

Legal relations between business actors and consumers bind themselves to agreements, wherein the agreement has agreed to carry out certain transactions. An agreement is the basis of an act of one or more persons who bind themselves to each other to cause legal consequences so that an agreement will arise from what the first party wants and what the second party wants so that there is an opportunity between the two parties [5] in the practice of buying and selling housing, consumers are given attractive offers about home products in a residential area developed by the developer, even with offers of special discounts and/or other attractive prizes [6]. Binding to housing buying and selling activities begins with a Sale and Purchase Binding Agreement (PPJB) which contains house products in a residential area along with promotional offers and prizes given during the promotion period. The PPJB is the beginning of an agreement between the developer and the consumer, which contains clauses concerning the agreement of the two parties [7].

In the context of flats or apartments, PPJB is regulated in Article 43 of the Flats Law which states that the process of buying and selling flats before construction is complete can be carried out through a Sale and Purchase Contract Agreement (PPJB) before a notary, besides that it is also regulated in PUPR Ministerial Decree Number 11 /KPTS/1994 concerning Guidelines for Binding Sale and Purchase of Flats and Decree of the State Minister for Public Housing No. 09/KPTS/1995 concerning Guidelines for Binding Sale and Purchase of Houses which substantially at the stage of the construction process can be carried out through the ordering system [8] PPJB is made by including the agreements, such as the amount of the price, the time of payment and the certainty of making the Deed of Sale and Purchase (AJB).

The PPJB practice is an agreement made by both parties, namely by the prospective buyer of a land or building as an initial binding before the parties make an AJB before the Land Deed Making Officer (PPAT) [9]. Purchasing a house with a preliminary sale and purchase agreement or PPJB is regulated in the provisions of Article 42 of Law Number 1 of 2011 concerning Housing and Residential Areas "Dwelling

houses, row houses, and/or flats which are still in the construction process stage can be marketed through a pre-sale agreement system- purchase in accordance with the provisions of the legislation [10].

Dispute Resolution Mediation

Mediation is a settlement effort in which the disputing or disputing parties agree to present an independent third party to act as a mediator (mediator) [11]. Mediation is one of the dispute resolution processes that is faster, cheaper, and can also provide greater access to justice for parties in finding ways to resolve disputes that are satisfactory and provide a sense of justice [12]. Mediation is included in Alternative Dispute Resolution (ADR) is an out-of-court dispute settlement institution based on the agreement of the parties to set aside litigation dispute resolution in court. Therefore, mediation is included in out of court settlements and is not an obligation to be carried out first when a dispute occurs [13].

The most popular alternative dispute resolution mediation process, it can be seen that every government agency or company has a tripartite institution to resolve internal disputes [14]. Juridically, mediation in court has been regulated in Articles 130 and 131 of the HIR for Java and Madura and 154 and 155 of the RBG outside Java and Madura. Article 130 HIR and 154 RBG state that:

Paragraph (1) "If on the appointed day both parties appear before the data, then the district court through the intermediary of the chairman tries to reach peace between the two parties.",

Paragraph (2) "If such reconciliation can be reached, then a deed is drawn up for that purpose in the session, in which both parties are punished to comply with the contents of the agreement that has been reached, which deed has the same power and is carried out in the same way as a decision normal."

Paragraph (3) "This stage of the decision cannot be appealed."

Articles 130 & 131 of the HIR and Articles 154 and Article 155 of the RBG clearly and firmly instruct judges to give priority to peace mechanisms including negotiation and mediation mechanisms. In the mediation process, all parties meet personally and directly with the mediator together and/or in different meetings [15]. If one looks closely at the provisions of the Arbitration Law and APS, it is found that with regard to mediation outside the court, there are generally only 2 (two) articles, namely Article 1 number 10 and Article 6 which regulate it. In addition, the regulation regarding Mediation is also regulated technically by the Supreme Court through Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Courts where in the PERMA mediation is included in formal justice, and all civil cases must first seek a settlement through mediation as specified in Article 4 paragraph (1) of the Mediation PERMA [16].

Collateral Aspect

Material guarantees can be considered one of them with the notion of collateral, but in practice in the banking sector, there are specific differences. The regulation in the Banking Law states that "Collateral is additional collateral that is submitted from the debtor customer to the bank in an effort to provide financing credit facilities." Meanwhile, collateral is practically interpreted as goods/objects that have a price or have an economic side that is used as additional collateral from the credit recipient's debt [17].

Collateral which is a credit from a debtor becomes an object marked by the existence of a mortgage right. As stipulated in Article 1 Number 11 of the Banking Law that credit is the provision of money or claims that can be equated with it, based on a loan agreement or agreement between the bank and another party that requires the borrower to repay the debt after a certain period of time with interest. Collateral/guarantee (collateral) is one of the elements of a credit agreement, collateral is needed for confidence in the bank that the customer (debtor) is able to return the loan in accordance with the agreement. Therefore the guarantee in the credit agreement is at least 100 percent of the credit score [18].

Collateral is a guarantee given by the debtor and/or a third party to the creditor because the creditor has an interest that the debtor must fulfill his obligations in an engagement (Etty Mulyati, Fajrina Aprilianti Dwiputri, 2018). The wealth is then tied up as collateral which functions as certainty of repayment at a later date if the credit recipient or debtor does not pay off the debt [19].

3. Methodology

The research method used is an empirical method by focusing on case studies/disputes that took place between the buyers of Antara Residence housing and PT. Haji Satir Real Estate is the developer of the Antara Residence housing. After that, data is collected based on information from housing residents who experience disputes over developer agreements to residents who are taking mediation efforts as a dispute

resolution step.

4. Discussion

Main Dispute between Residential Developers and Home Owners

Developer PT. Haji Sati Real Estate has been promoting the housing offered since 2012. Promotional activities have taken place between developers and prospective buyers with several points as the subject of the offer, including:

1. Prices tend to be cheap;
2. Land area and buildings are more spacious compared to other housing areas;
3. The strategic location of housing is in the middle of the city which provides quick access to several leading places;
4. Beautiful and strategic housing arrangement or model;
5. Purchase scheme with cash and credit models;
6. Design of a special house building;
7. Guaranteed legal documents that can be issued at a cost included in the purchase price.

All of these offers were promised by the developer to be realized which were then followed up into a sale and purchase agreement. As is well known by prospective buyers, the house which later becomes the object of sale and purchase is indented or by order. When a purchase agreement has been reached, the prospective buyer prepares a certain amount of funds to ensure the purchase of the unit. As many as 38 residents of the Antara Residence housing complex bought houses and made sale and purchase transactions using a soft cash scheme. Soft cash is a method of buying and selling goods in short installments and is not regulated every month since the sale and purchase transaction took place. Usually, soft cash includes a payment ratio of 3 – 9 payments with a fixed price scheme divided by 9 payments and is set to be paid on a certain date and month that has been agreed upon by the parties.

After negotiations related to the agreement on the payment scheme, then preparations for signing the agreement document are next. In practice, buying and selling activities that occur in the property business are done by making a Preliminary Sale and Purchase Agreement (PPJB) document. PPJB is carried out as a sale and purchase agreement between the developer and the prospective buyer at the stage of the house construction process as stipulated in Article 11 Paragraph (1) and Paragraph (2) of the Minister of PUPR Regulation Number. 11/PRT/M/2019 concerning Preliminary Agreement for Sale and Purchase of Houses. The PPJB made by the Antara Residence housing developer in the document does not fulfill the points that should be included in the PPJB, including:

1. Identity of the parties;
2. PPJB object description;
3. House prices and payment procedures;
4. Guarantee for development actors;
5. Building maintenance;
6. Building use;
7. Transfer of rights;
8. Cancellation and the expiration of PPJB; And
9. Dispute resolution.

At least the points mentioned above are included in the agreement that was made and signed, but in fact, the developer made the PPJB did not contain several points such as the absence of guarantees for the developer, the technicalities of building maintenance, and technical use of the building were not included. Data on 1 respondent who had bought a house in soft cash through documentary evidence provided by the main informant which was used as the beginning of the examination that there had been a transaction made on November 25 2013 binding the two parties to purchase a housing unit in the Antara Residence housing on Location of Block 2B Number 5 Tamalanrea Indah Village, Tamalanrea District, Makassar City.

Since the signing of the PPJB document between the developer and the homeowners in 2020, the developer has not carried out the obligation to increase the base of the right as promised in the receipt that was made and signed by both parties as proof that a sale and purchase transaction was carried out for 1 unit of house

in the Antara Residence housing. The next check is regarding the status of certificates owned by housing residents by checking at the National Land Agency (BPN) of the Makassar City Land Office. After checking is done, the owner on behalf of the certificate referred to in the related object is still on behalf of the personal owner of the developer PT. Haji Satir Real Estate & Developer namely Haji Eddy Satir Hasan. This is the basis for the informants as homeowners to object and then submit an objection to the developer. The reasons contained in the objection note which were initially conveyed through a subpoena are:

1. The developer has neglected his obligation to take care of land documents according to the agreement, namely the arrangement of transferring the name of the certificate from behalf of the developer owner to being on behalf of the source as the buyer and the legal owner who has paid off the purchase.
2. The developer has neglected consumer rights as stated in the PPJB, including the quality of the building that is not suitable, and the construction completion period that has passed.
3. The developer does not provide clear information on the legal status of the position of rights registered at the National Land Agency (BPN) of the Regional Office will Makassar on the housing object Antara Residence.
4. The developer did not fulfill his responsibility by providing public facilities and social facilities at the Antara Residence housing not as promised at the outset when offering the housing.
5. Residents of the Antara Residence housing complex who have purchased a house using the soft cash payment method will form a group of residents who will cumulatively submit efforts to resolve disputes through external mediation.

Mediation of Dispute Settlement for Defaults of Housing Developers and Residents of Home Owners

Efforts were made by the first collection of housing residents through mediation steps. Mediation will be carried out by presenting an external mediator to examine the preliminary and analyze the dispute process that has been going on. The submission of the mediation agenda is to resolve several main points in the dispute, including disputes over ownership of rights, disputes over the management of land documents, costs, and disputes over the fulfillment of achievements contained in the PPJB. The group of residents then agreed to submit mediation by presenting a government agency that has the authority to carry out mediation, namely the Makassar City Ombudsman as a mediator. The first is a collection of residents submitting reports related to related issues, especially on the subject matter of the dispute and the chronology of events. Next, the process of examining related reports is carried out.

After carrying out the initial examination, the mediator will then schedule mediation to be carried out by notifying the parties in advance that a mediation agenda will be held to settle the principal case related. The submission is contained in a notification letter containing:

1. Time and place of mediation.
2. Arrangement of mediators;
3. Main dispute and answers of the parties;
4. Costs incurred during the mediation process;
5. Column to sign the agreement of the parties for the mediation to be carried out according to the schedule submitted in the letter;
6. Column for registration of teams and/or other parties who will be present at the implementation of the mediation agenda; And
7. Deadline for confirmation of schedule changes if you do not agree to the proposed schedule.

The deadline for submitting feedback for confirmation of mediation lasts 7 days after the notification document is received by each party. This is to ensure that no party objects and/or denies that there is no official notification or submission regarding the mediation agenda.

Implementation of mediation on the day that has been determined and agreed upon by the parties for mediation to take place. The principal mediation of the dispute between the housing developer and the residents of the Antara Residence housing complex took place on Monday 19 October 2020 which took place in the Budget Board Meeting Room of the Regional People's Representative Council (DPRD) Office of

Makassar City by presenting the developer and his attorney and a group of residents and their attorney the law.

The Makassar City Ombudsman Commissioner who then acts as a mediator then leads the mediation agenda by directing it according to the series of events as follows:

1. Opening.
2. Prayer reading.
3. Reading of the main case and introduction by the mediator.
4. Submission by residents.
5. Answer by the developer.
6. Designation of documents.
7. Joint decision making breaks.
8. Submission of residents' wishes.
9. The answer to the fulfillment of the wishes of the residents by the developer.
10. Recording of conclusions.
11. Read the draft mediation results.
12. Signing of documents resulting from mediation by the parties, mediator, and witnesses.
13. Mediation closing.

Mediation which lasted approximately 3 hours, then resulted in points of agreement, namely:

1. The developer is willing to take care of and submit certificates belonging to residents who have paid off their house payments quickly and bear all costs incurred as a result of obtaining the certificate.
2. Residents have the right to press for the issuance of citizen certificates that are intentionally or unintentionally delayed by the developer.
3. The parties determine the deadline for completing the management and submission of the certificate of residents of the Antara Residence housing until it is handed over to the rightful citizen no later than 90 (ninety) days after the results of the mediation are signed by the parties.
4. If the issuance process has passed the specified deadline as a result of a process determined otherwise by the authorized official, in this case, the National Land Agency (BPN) Makassar Land Office, then the parties wait for the completion of the issuance of citizen certificates based on a predetermined time.
5. If the developer neglects his obligation to take care of the issuance of citizen certificates, citizens can take civil and/or criminal remedies as stipulated in laws and regulations.

The mediation forum is then closed by the mediator by producing conclusions on the results of the mediation that have been mutually agreed upon and signed by the parties and witnesses from each party. After the document is signed, copies of the original mediation results stamped, and a wet signature will be sent to each party. Documents resulting from mediation are confidential for other parties who have no interest and are not disseminated except in certain cases agreed by the parties.

5. Conclusions

Based on the subject matter of the related dispute, the provisions that apply, as well as the statements in the examination up to the mediation agenda, it is concluded that:

1. There was a breach of promise/default on the part of the developer within the agreed time limit in obtaining the certificate, but the developer did not follow up on it.
2. Some of the efforts taken by both parties have been explained by the developer that the company's financial reasons are a factor in not releasing all legal burdens and responsibilities that should be met as an achievement from the developer in guaranteeing the rights of citizens who have paid their payment obligations.
3. The mediation agenda that brings together the two parties, as well as statements through mediation evidence as a dispute resolution step to issue related documents in detail with the processing time limit which is fully contained in the PPJB document as the initial document binding

the developer's legal obligations.

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