The Legal Review eLaw.my JE 32/2026 7 August 2026

JUDGMENT Express

EKOVEST CAPITAL SDN BHD
v.
TAN TIONG HWA & ANOR AND ANOTHER APPEAL

Court of Appeal, Putrajaya
Azizul Azmi Adnan, Ong Chee Kwan, Nadzarin Wok Nordin JJCA
[Civil Appeal Nos: W-04B(NCVC)(W)-349-10-2025 & W-04B(NCVC)(W)-359-10-2025]
28 July 2026

Contract: *Sale and purchase of property — Appeal against award of balance liquidated ascertained damages ('LAD') after respondents had accepted vacant possession, received LAD and executed settlement letters in full and final settlement — Whether respondents' claims barred by limitation — Whether settlement letters constituted binding accord and satisfaction precluding further claims for LAD — Whether reopening concluded settlement by reference to decisions post-dating it would confer unjust enrichment — Whether delivery of vacant possession supported only by partial certificate of completion and compliance valid — Whether, if balance LAD were recoverable, developer's rebate should be deducted in computing LAD*

The appellant in Civil Appeal No. W-04B(NCVC)(W)-349-10-2025 (Appeal 349) and Civil Appeal No. W-04B(NCVC)(W)-359-10-2025 (Appeal 359) was the developer of a mixed development in Kuala Lumpur (EkoCheras). Prior to EkoCheras being marketed, the appellant obtained from the Ministry of Housing and Local Government a letter dated 18 October 2013 extending the completion period from 36 months to 48 months (EOT). The respondents in the respective appeals subsequently purchased from the appellant two residential parcels in the said development, namely, Parcel J-20-11 (1st parcel) and J-27-01 (2nd parcel). The booking fee of RM10,000.00 for each parcel was paid on 7 September 2013, and the sale and purchase agreements (SPAs) for both parcels were respectively executed on 16 December 2013 and 10 April 2014. Notices of vacant possession for both units were subsequently issued vide letters dated 2 May 2019 with a partial certificate of completion and compliance (partial CCC) on the same date. Vacant possession was deemed delivered on 16 May 2019 and was followed by a certificate of completion and compliance (full CCC) on 13 September 2019. The respondents were paid liquidated ascertained damages (LAD) for each parcel and the common facilities, and executed settlement letters dated 16 May 2019 and 27 June 2019 acknowledging receipt of the LAD as full and final settlement of all claims arising from the said parcels and/or common facilities. Following the Federal Court's decision in *Ang Ming Lee & Ors v. Menteri Kesejahteraan Bandar, Perumahan Dan Kerajaan Tempatan & Anor And Other Appeals (Ang Ming Lee)* that reg 11(3) of the Housing Development (Control and Licensing) Regulations 1989 (HDR) did not empower the Controller to grant extensions of time modifying Schedule H, and nine months after signing the letters of settlement, the respondents commenced proceedings in the Sessions Court on 24 February 2020 seeking *inter alia* additional LAD on the basis that the EOT was invalid, or alternatively balance LAD on other bases. Based on *Ang Ming Lee*, the Sessions Court held *inter alia* that the EOT was *ultra vires* reg 11(3) of the HDR and allowed the respondents' claim. The appellant appealed, and prior to the appeal being heard and after the Federal Court's decision in *Obata-Ambak Holdings Sdn Bhd v. Prema Bonanza Sdn Bhd (Obata-Ambak)*, which clarified that *Ang Ming Lee* did not operate retrospectively so as to invalidate extensions of time granted before it was decided, the respondents abandoned their claim on the invalidity of the EOT. A consent order dated 6 January 2025, as clarified by a consequential order dated 28 April 2025, was recorded between the parties *inter alia* that the EOT was valid and binding and that the appellant was obliged to deliver vacant possession and complete the common facilities within 48 months. Notwithstanding that concession, the Judicial Commissioner (JC) held that the respondents were entitled to the balance LAD albeit on a recalculated basis. Applying *PJD Regency Sdn Bhd v. Tribunal Tuntutan Pembeli Rumah & Anor And Other Appeals*, the JC held that time for computation of LAD commenced from the date the booking fees were paid; and, allowing the respondents' cross-appeal, that LAD ran until the date the full CCC was issued; and that the settlement letters did not bar the respondents' claim. Hence the instant appeal. The issues that arose for determination were, whether the respondents' claims were barred by limitation under s 6(1) of the Limitation Act 1953; whether the settlement letters constituted a binding accord and satisfaction precluding further claims for LAD and whether the statutory character of the Housing Development (Control and Licensing) Act 1966 (HDA) and HDR rendered the settlement letters ineffective on the basis that statutory protection could not be waived and there could be no estoppel against a statute; whether allowing the respondents' claims would result in unjust enrichment; whether the principles in *Obata-Ambak* and *PJD Regency* applied to the respondents' claims; whether vacant possession validly could be delivered upon a partial CCC; and, if balance LAD remained recoverable, whether the developer's rebate should be taken into account in its computation.

Held (allowing the appellant's appeal):

(1) The respondents' claims were not time-barred. The limitation holding in *Obata-Ambak* was confined to claims challenging the validity of cls 25 and 27 of the SPAs themselves, in which the cause of action accrued from the date of execution of the SPAs. The present claims were not of that character, as the respondents' claim was for balance LAD for late delivery within the framework of the SPAs as they stood. As the notices of vacant possession were dated 2 May 2019 and the action was commenced on 24 February 2020, the claims were brought well within the six-year limitation period under s 6(1) of the Limitation Act 1953. *Obata-Ambak* was not to be read as an overarching limitation defence. (paras 16-18)

(2) The settlement letters constituted a valid and binding accord and satisfaction and completely discharged the appellant's liability for LAD in respect of the parcels and common facilities. The respondents had accepted payment computed in accordance with the law as then understood, signed letters acknowledging receipt in 'full and final settlement of any and all loss and damage' and irrevocably waiving further claims, accepted the keys, retained the monies and entered into possession. Under s 64 of the Contracts Act 1950, a compromise of an accrued claim supported by payment bound the parties according to its terms. (paras 20, 21, 22 & 36)

(3) The rule against contracting out of the statutory Schedule H sale and purchase agreement did not invalidate a *bona fide* post-breach compromise of an accrued LAD claim. Nothing in the HDA or the HDR prohibited a purchaser from compromising an accrued LAD claim, and the legislative scheme in fact recognised settlements. The maxim that there was no estoppel against a statute was directed at attempts to render lawful that which a statute prohibited, or to enlarge powers or curtail rights in defiance of a statutory command. It had nothing to say about the ordinary compromise of an accrued private claim for money. (paras 23-29)

(4) *Loh Tina & Ors v. Kemuning Setia Sdn Bhd & Ors And Another Appeal* was distinguishable from the instant case and did not assist the respondents. The holdings therein that the purchasers could not be estopped from pursuing rights 'unlawfully taken away from them in breach of the HDA and the Regulations', and that estoppel does not operate against a statute or a statutory form of contract, were made in a context where the developer had, without the Controller's certification, unlawfully modified the period for delivery of practical completion. The estoppel invoked therein was one deployed to perfect an unlawful deprivation of statutory rights. The present case was materially different in that there was no unlawful deprivation because the EOT by consent had been accepted as valid and binding, and the appellant had not invoked estoppel to defeat a statutory right but relied on an accord and satisfaction which discharged an accrued monetary claim. (paras 28-29)

(5) The respondents' evidence that they had not intended the settlement letters to operate as a waiver of their full entitlement, and that they signed the same because they otherwise would not have been given either the keys or any payment, could not in law bear the weight placed upon it for three reasons. Firstly, the said letters were written instruments the terms of which were clear and unambiguous; secondly, no case of duress, coercion or unconscionable procurement had been pleaded or proved; and thirdly, the line of authority requiring 'clear, unequivocal and compelling evidence' of an informed waiver, had to be read against the factual setting out of which it grew, namely, cases in which the LAD tendered was demonstrably an under-calculation of the purchaser's entitlement as the law then stood, or in which the developer relied on a bare receipt to defeat rights the purchaser did not know had been infringed. In this regard, the present case was different, as the LAD tendered in May and

June 2019 was computed precisely in accordance with the SPAs as they stood and the law as it was then understood and applied. (paras 30-33)

(6) A compromise was by its very nature an allocation of risk as to the facts and as to the law. A settlement of a genuine claim was not vitiated because a later decision showed that one party would have done better had he fought. (paras 34-35)

(7) Allowing the respondents to reopen and recompute a concluded settlement by reference to decisions which post-dated it would confer upon the respondents the very retrospective windfall and the very unjust enrichment against which the Federal Court warned in *Obata-Ambak*. Changing the label from 'EOT LAD' to 'balance LAD' did not alter its substance. (paras 37-40)

(8) There was no necessity to determine whether *PJD Regency*, which was a binding authority, was applicable on the facts of the present case. Assuming in the respondents' favour that their claims survived, LAD would have run from the dates on which the booking fees were paid. Their difficulty lay elsewhere. *PJD Regency* stated how LAD was to be computed upon a subsisting claim and not whether a claim subsisted. A claim discharged by accord and satisfaction was not revived by a later decision refining the method of computation, any more than a settled personal injury claim was reopened by a later decision revising the conventional awards. Since the respondents' claims were extinguished by the settlement letters some 18 months before *PJD Regency* was decided, the question of computation under that decision did not arise. (paras 41-42)

(9) The delivery of vacant possession supported by the partial CCC was valid and effective and the JC erred in extending the LAD period to 13 September 2019. The certification regime had to be read purposively. Whether it was a Borang F or Borang F1 under the Street, Drainage and Building Act 1974 and the Uniform Building By-Laws 1984, the function of the certificate contemplated by cls 26 and 35(c) was one and the same in respect of the building it covered, namely to certify that the building had been duly completed and was safe and fit for occupation. The partial CCC covered the whole of the respondents' blocks, and the common facilities were certified complete by the architect. Having elected to take delivery and to settle, the respondents could not now, on the strength of decisions handed down years afterwards, unpick the delivery which they accepted in order to enlarge a claim which stood discharged. (paras 48-51)

(10) Given that the respondents' claims were precluded by the settlement letters, no balance LAD fell to be computed and the point was strictly academic. Had the claim for balance LAD survived, its computation ought to have taken the rebate granted by the appellant at the point of sale into account. The principle was one of coherence. LAD under Schedule H was fixed by reference to the purchase price because the purchase price was the measure of what the purchaser laid out. Where the purchase price borne by the purchaser had been reduced by a rebate, computing LAD on the gross price would compensate the purchaser for an outlay he had never made, and confer a windfall to that extent. The rebate operated defensively, in the arithmetic of any LAD actually payable, but not offensively, as a sum recoverable in its own right. The appellant's counterclaim, in so far as it sought repayment of the rebate as such, was therefore rightly dismissed. (paras 52-55)

Case(s) referred to:

Ace Jerneh Insurance Berhad v. Best Re (L) Limited [2015] 2 MLRH 377 (refd)

Ang Ming Lee & Ors v. Menteri Kesejahteraan Bandar, Perumahan Dan Kerajaan Tempatan & Anor And Other Appeals [2019] 6 MLRA 494 (refd)

Chau Chee Sing & Ors v. R & F Development Sdn Bhd (Encl 80) [2021] MLRHU 1571 (not folld)

EUPE Bangsar South Development (JV) Sdn Bhd v. Lam Sai Yih [2022] MLRHU 2344 (distd)

Hedgeford Sdn Bhd v. Sri Gananatha Sivanathan & Ors [2018] MLRHU 1151 (distd)

Ikumi Terada v. Jemix Co Ltd & Ors And Another Appeal [2020] 2 MLRA 150 (distd)

Kompleks Perkayuan Kelantan Sdn Bhd v. Tian Chuan Sen & Yang Lain [2019] MLRAU 369 (refd)

Leong Keng Chiang v. Prema Bonanza Sdn Bhd [2021] MLRHU 494 (distd)

Loh Tina & Ors v. Kemuning Setia Sdn Bhd & Ors And Another Appeal [2020] 4 MLRA 450 (distd)

Obata-Ambak Holdings Sdn Bhd v. Prema Bonanza Sdn Bhd And Other Appeals [2024] 6 MLRA 1 (folld)

PJD Regency Sdn Bhd v. Tribunal Tuntutan Pembeli Rumah & Anor And Other Appeals [2021] 1 MLRA 506 (folld)

Sentul Raya Sdn Bhd v. Hariram Jayaram & Ors And Other Appeals [2008] 1 MLRA 473 (refd)

Southville City Sdn Bhd v. Lim Yee Chien & Ors [2019] MLRHU 1122 (distd)

Tham Wai Keat & Ors v. Cosmopolitan Avenue Sdn Bhd & Anor [2023] MLRHU 2428 (folld)

Toh Ai Shi v. Talent Team Sdn Bhd & Anor [2022] MLRHU 1380 (refd)

UEM Group Bhd v. Genisys Integrated Engineers Pte Ltd & Anor [2010] 2 MLRA 668 (refd)

Wong Sii Ling & Ors v. BJ Homes Development Sdn Bhd & Ors And Another Case [2025] MLRHU 1712 (not folld)

Legislation referred to:

Contracts Act 1950, s 64

Housing Development (Control and Licensing) Regulations 1989, reg 11(3), Schedule H

Limitation Act 1953, s 6(1)

Rules of the Court of Appeal 1994, r 18(1)

Uniform Building By-Laws 1984, by-law 25(2)

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[For Appeal No: W-04B(NCVC)(W)-349-10-2025]

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[For Appeal No: W-04B(NCVC)(W)-359-10-2025]

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JUDGMENT

Ong Chee Kwan JCA:

A. Introduction

[1] The question at the heart of this appeal is a short one, although it is of some importance to the housing industry. A purchaser takes delivery of vacant possession. He is paid liquidated ascertained damages ("LAD") for the developer's delay, and he signs a letter recording that the payment is in full and final settlement of all his claims. Years later, decisions of the courts show that, had he fought the matter out, he would have recovered more. May he then come back and sue for the difference? Related questions arise as to the reach of the decision of the Federal Court in *Obata-Ambak Holdings Sdn Bhd v. Prema Bonanza Sdn Bhd And Other Appeals* [2024] 6 MLRA 1 ("*Obata-Ambak*"), the treatment of rebates in the computation of LAD, the application of *PJD Regency Sdn Bhd v. Tribunal Tuntutan Pembeli Rumah & Anor And Other Appeals* [2021] 1 MLRA 506 ("*PJD Regency*"), and whether vacant possession may validly be delivered on the strength of a Partial Certificate of Completion and Compliance (Borang F1).

[2] The appellant, Ekovest Capital Sdn Bhd, is the developer of the 'EkoCheras' mixed development in Kuala Lumpur. The respondents bought two residential parcels in it, Parcel J-20-11 ("the 1st Parcel") and Parcel J-27-01 ("the 2nd Parcel"). With leave granted on 27 August 2025, the appellant appeals against the decision of the learned Judicial Commissioner ("JC") of the High Court at Kuala Lumpur dated 6 January 2025. That decision dismissed the appellant's appeal in part, allowed the respondents' cross-appeal in part, and awarded the respondents balance LAD together with interest and costs, thereby varying the decision of the learned Sessions Court Judge ("SCJ") dated 27 July 2021.

[3] Having heard learned counsel on both sides and considered the appeal records and the written and oral submissions, we were unanimously of the view that the appeal ought to be allowed. We set aside the orders of the courts below in so far as they awarded the respondents balance LAD, and we dismissed the respondents' claims. These are our grounds.

B. Background Facts

[4] The facts are largely not in dispute and may be shortly stated. Before the EkoCheras project was marketed, the appellant applied to the Ministry of Housing and Local Government for an extension of time to deliver vacant possession. By a letter dated 18 October 2013, the Controller granted an extension ("the EOT") which lengthened the completion period from thirty-six (36) months to forty-eight (48) months. The EOT therefore came before the respondents' sale and purchase agreements were signed.

[5] The respondents paid booking fees of RM10,000.00 for each of the 1st Parcel and the 2nd Parcel on 7 September 2013. The statutory sale and purchase agreements in the form prescribed by Schedule H of the Housing Development (Control and Licensing) Regulations 1989 ("the SPAs" and "the HDR" respectively) were executed on 16 December 2013 for the 1st Parcel and on 10 April 2014 for the 2nd Parcel. Clauses 25(1) and 27(1), as varied under the EOT, gave the appellant forty-eight (48) calendar months in which to deliver vacant possession and to complete the common facilities.

[6] Notices of Vacant Possession dated 2 May 2019 were issued for both parcels. They were supported by a Partial Certificate of Completion and Compliance (Borang F1) of the same date ("the Partial CCC") issued for the residential blocks, including Blocks J and H in which the parcels are situated. The project architect, Messrs KDI Sdn Bhd, had earlier certified the completion of the common facilities by a letter dated 20 December 2018. Vacant possession was deemed delivered on 16 May 2019. The full Certificate of Completion and Compliance (Borang F) for the development as a whole ("the Full CCC") followed on 13 September 2019. The appellant's architect (SD2) testified that the residential blocks had been completed, and that the interval between the Partial CCC and the Full CCC was due to outstanding compliance matters, principally Bomba compliance, in the hotel block, which was the last phase of the development.

[7] At or about the time vacant possession was delivered, the appellant paid the respondents LAD for each parcel and for the common facilities. The computation took the 48-month period as running from the dates of the respective SPAs. The respondents then signed settlement letters dated 16 May 2019 for the parcels and 27 June 2019 for the common facilities (collectively, "the Settlement Letters"). The material words are these:

> "...upon your receipt of the aforesaid sum, you unconditionally agree that this shall be in full and final settlement of any and all loss and damage... arising out of or in respect of the said Parcel and/or the common facilities. You further agree that you irrevocably waive and shall have no further rights or claims whatsoever against us... in respect of all matters regarding the said Parcel."

[8] The respondents took the keys to the parcels together with the settlement cheques, banked in and kept the money, and went into possession. It is not disputed that the payments were accepted and cashed without a word of protest, and that not a sen of them has ever been tendered back.

[9] On 26 November 2019 the Federal Court delivered its decision in *Ang Ming Lee & Ors v. Menteri Kesejahteraan Bandar, Perumahan Dan Kerajaan Tempatan & Anor And Other Appeals* [2019] 6 MLRA 494 ("*Ang Ming Lee*"), holding that reg 11(3) of the HDR did not empower the Controller to grant extensions of time modifying Schedule H. On 24 February 2020, some nine months after signing the Settlement Letters and three months after *Ang Ming Lee*, the respondents commenced the present action in the Sessions Court. They claimed, among other things, additional LAD on the footing that the EOT was invalid, that is to say computed on a 36-month completion period, and, in the alternative, balance LAD on other bases.

C. The Decisions Below

[10] The learned SCJ allowed the respondents' claims by her decision dated 27 July 2021. Her Ladyship held, in substance, that: (a) following *Ang Ming Lee*, the EOT was ultra vires reg 11(3) of the HDR and therefore invalid; (b) the respondents did not have to challenge the EOT by way of judicial review; (c) the claims were not time-barred; (d) vacant possession was deemed delivered on 16 May 2019, with LAD to be calculated over a 36-month period from the dates of the SPAs; (e) the Settlement Letters did not bar a claim for further LAD; and (f) the appellant could not recover the rebate, which was a promotion voluntarily given.

[11] The appellant appealed to the High Court. Between the decision of the Sessions Court and the hearing of that appeal, the Federal Court delivered its decision in *Obata-Ambak* on 26 July 2024, which made it clear that *Ang Ming Lee* does not operate retrospectively so as to invalidate extensions of time granted before it was decided. The respondents accordingly abandoned their claim founded on the invalidity of the EOT. That was recorded by consent in the Order dated 6 January 2025, as clarified by the Consequential Order dated 28 April 2025: the EOT extending the completion period from 36 months to 48 months is not *ultra vires* the Housing Development (Control and Licensing) Act 1966 ("the HDA") and is valid and binding on the respondents, and the appellant was obliged to deliver vacant possession and complete the common facilities within 48 months under cls 25(1) and 27(1) of the SPAs.

[12] That concession notwithstanding, the learned JC held that the respondents remained entitled to balance LAD, *albeit* on a recalculated basis. Her Ladyship held that: (a) applying *PJD Regency*, time for the computation of LAD began to run from the date the booking fees were paid, namely 7 September 2013, and not from the dates of the SPAs; (b) allowing the respondents' cross-appeal, delivery of vacant possession supported only by the Partial CCC was invalid, so that LAD ran until the Full CCC was issued on 13 September 2019; (c) the claims were not time-barred, the cause of action having accrued upon vacant possession under cl 25(3) of the SPAs; (d) the Settlement Letters neither estopped the respondents nor otherwise stood in the way of the claim; and (e) the appellant's counterclaim for the rebate failed. On that footing Her Ladyship awarded the respondents balance LAD of RM50,107.32 (parcel) and RM16,808.72 (common facilities) for the 1st Parcel, and RM74,499.70 (parcel) and RM21,820.64 (common facilities) for the 2nd Parcel, with interest at 5% per annum from the date of filing of the writ and costs of RM15,000.00.

D. The Issues In This Appeal

[13] The submissions before us covered the following issues, which we take in turn:

(a) whether, and to what extent, the decision of the Federal Court in *Obata-Ambak* applies to this appeal;

(b) whether the respondents' claims are time-barred under s 6(1) of the Limitation Act 1953;

(c) whether the Settlement Letters are a binding accord and satisfaction which precludes the claims for balance LAD, and in particular whether the statutory character of the SPAs under the HDA and the HDR renders the Settlement Letters ineffective, on the ground that statutory protection cannot be waived and that there can be no estoppel against a statute;

(d) whether allowing the respondents' claims would result in unjust enrichment;

(e) whether the principles in *PJD Regency* avail the respondents;

(f) whether the delivery of vacant possession supported by the Partial CCC (Borang F1) was valid, including the preliminary objection founded on *Ikumi Terada v. Jemix Co Ltd & 2 Others*; and

(g) whether the computation of LAD ought to take the appellant's rebate into account.

E. The Approach Of An Appellate Court

[14] The principles governing appellate intervention are settled and need no elaboration. An appellate court will not ordinarily disturb findings of fact made by a trial court unless the decision is plainly wrong, or there has been no or insufficient judicial appreciation of the evidence occasioning an injustice [See: *UEM Group Bhd v. Genisys Integrated Engineers Pte Ltd & Anor* [2010] 2 MLRA 668 ("*UEM Group Bhd*") and *Kompleks Perkayuan Kelantan Sdn Bhd v. Tian Chuan Sen & Yang Lain* [2019] MLRAU 369 ("*Kompleks Perkayuan Kelantan*")].

[15] The questions which decide this appeal, however, are of a different order. The legal effect of the Settlement Letters, the construction of the SPAs, the reach of *Obata-Ambak* and *PJD Regency*, and the validity in law of a delivery of vacant possession supported by a Partial CCC, are all questions of law and of the construction of statutes and written contracts. On questions of that kind, an appellate court stands in the same position as the court of first instance and enjoys no lesser advantage [See: *Ace Jerneh Insurance Berhad v. Best Re (L) Limited* [2015] 2 MLRH 377 ("*Ace Jerneh Insurance*")]. We are accordingly entitled, and indeed bound, to intervene if the courts below have erred in law.

F. Limitation And The Reach Of *Obata-Ambak*

[16] It is convenient to begin with the appellant's limitation defence, because the argument upon it frames the proper reach of *Obata-Ambak*. Learned counsel for the appellant submitted that, applying *Obata-Ambak*, the respondents' causes of action accrued when the SPAs were executed on 16 December 2013 and 10 April 2014, with the result that the action filed on 24 February 2020 was caught by s 6(1) of the Limitation Act 1953.

[17] We are unable to accept that contention, and to this extent the respondents are right. The limitation holding in *Obata-Ambak* was arrived at in a particular context. The purchasers there were, in substance, attacking the validity of cls 25 and 27 of their own SPAs, terms to which they had agreed when they signed. It was in that setting that the Federal Court held, at paragraph [96], that the cause of action for such a challenge accrued from the date of execution of the SPAs, that being the earliest point at which the claim could have been brought, or upon breach of the terms of the SPAs.

[18] The claim before us is not of that character. The respondents no longer impugn the EOT or the 48-month completion period. Both are, by consent, valid and binding. What they claim is balance LAD for late delivery within the framework of the SPAs as they stand. Clauses 25(3) and 27(3) say in terms, and for the avoidance of doubt, that the cause of action to claim liquidated damages accrues on the date the purchaser takes vacant possession of the parcel and on the date the vendor completes the common facilities. Until the contractual period has run and delivery has been effected, there can be no breach, and no ascertainable period of delay. The Notices of Vacant Possession were dated 2 May 2019, and the action was commenced on 24 February 2020, comfortably within six years. The claims are therefore not time-barred. With respect, to read *Obata-Ambak* as an overarching limitation defence is to read that decision too widely.

[19] It does not follow, however, that *Obata-Ambak* has nothing to say to this appeal, as the respondents would have it. Limitation was but one strand of that decision. The second strand, and for present purposes the decisive one, concerns what is to happen when purchasers have accepted LAD in full and final settlement upon delivery of vacant possession, and then seek, on the strength of later judicial developments, to reopen the position and extract a further payment. Upon that question the Federal Court spoke in emphatic terms, and what it said applies to this appeal with full force. We explain why.

G. The Settlement Letters: A Binding Accord And Satisfaction

[20] We come to the central issue. In our judgment the learned JC fell into error in declining to give effect to the Settlement Letters. They are a valid and binding accord and satisfaction. They discharged the appellant's liability for LAD in respect of the parcels and the common facilities, and they answer the whole of the present claim.

[21] The facts bear repeating. By the time the Settlement Letters were signed, the appellant had performed its obligations to deliver vacant possession and to complete the common facilities, late though it was. The respondents' claims to LAD had accrued and had crystallised. The appellant tendered payment computed in accordance with the SPAs as they then stood, that is, on the 48-month completion period running from the dates of the SPAs, which was the law as it was then understood and applied. In exchange, the respondents signed letters in the clearest of terms, recording the payment as being in "full and final settlement of any and all loss and damage" and "irrevocably" waiving "any further rights or claims whatsoever". They accepted the payments and banked them in. They took the keys and went into possession. They hold the money to this day.

[22] That is an accord and satisfaction in its classic form. Section 64 of the Contracts Act 1950 permits a promisee to dispense with or remit, wholly or in part, the performance of the promise made to him, or to accept instead of it any satisfaction which he thinks fit. A compromise of an accrued claim, supported by payment which is accepted, binds according to its terms. The law leans in favour of upholding settlements. There is a public interest in finality and in disputes being laid to rest without litigation, and a party who has taken the benefit of a settlement will not be heard to approbate and reprobate.

G1. The Distinction Between Contracting Out and Post-Breach Compromise

[23] The respondents' principal answer, which found favour below, was that the right to LAD under a Schedule H contract is a statutory protection conferred by social legislation. A statutory SPA, it was said, cannot be contracted out of, varied or modified to the prejudice of house purchasers [See: *Sentul Raya Sdn Bhd v. Hariram Jayaram & Ors And Other Appeals* [2008] 1 MLRA 473 ("*Sentul Raya*")]. Any waiver of such protection must be proved by clear, unequivocal and compelling evidence of an informed decision [See: *Hedgeford Sdn Bhd v. Sri Gananatha Sivanathan & Ors* [2018] MLRHU 1151 ("*Hedgeford*"); *Southville City Sdn Bhd v. Lim Yee Chien & Ors* [2019] MLRHU 1122 ("*Southville City*"); *EUPE Bangsar South Development (JV) Sdn Bhd v. Lam Sai Yih* [2022] MLRHU 2344 ("*EUPE Bangsar South*"); *Leong Keng Chiang v. Prema Bonanza Sdn Bhd* [2021] MLRHU 494 ("*Leong Keng Chiang*")]. And in any event, it was said, there can be no estoppel against a statute [See: *Loh Tina & Ors v. Kemuning Setia Sdn Bhd & Ors And Another Appeal* [2020] 4 MLRA 450 ("*Loh Tina*")].

[24] Properly understood, these propositions do not carry the respondents home. They run together two situations which are quite distinct in law.

[25] The first is the prospective exclusion or dilution of a purchaser's statutory rights which come in the form of terms in, or collateral to, the statutory contract which seek, before any dispute has arisen, to exclude, cap or vary what the prescribed form confers upon the purchaser. That is the mischief at which the rule against contracting out is aimed. The Schedule H form is prescribed by law. A developer has no freedom to impose terms more onerous than the scheduled form, and a device by which a purchaser is made, at the point of sale or during the currency of the contract, to sign away rights which the legislation confers upon him will not be given effect. *Sentul Raya* and the cases which follow it are directed at that mischief.

[26] The second is the compromise of an accrued claim. This is a settlement reached after the developer's breach has occurred and the purchaser's cause of action for LAD has crystallised, by which the parties resolve the quantum of an accrued money claim. Such a settlement varies nothing in the statutory contract. It takes the statutory rights as it finds them and disposes of the money claim arising from their breach. Nothing in the HDA or in the HDR forbids a house purchaser from compromising an accrued claim for LAD, any more than a plaintiff is forbidden to settle any other accrued statutory cause of action. If anything, the legislative scheme points the other way. The Tribunal for Homebuyer Claims constituted under Part VI of the HDA is to assist parties towards a settlement, and settlements reached may be recorded and take effect as awards. As the High Court put it in *Tham Wai Keat & Ors v. Cosmopolitan Avenue Sdn Bhd & Anor* [2023] MLRHU 2428 ("*Tham Wai Keat*"), in the absence of fraud, plaintiffs are bound by the terms of a settlement agreement recording LAD accepted in full and final settlement, and cannot resile from their promise.

[27] In truth, the distinction is not a novel one. It is the very distinction drawn by the Federal Court in *Obata-Ambak* itself. At para [99], the Federal Court attached decisive significance to the fact that the purchasers there had "executed a full and final settlement when they accepted the payment of the LAD in 2017 from the developer", and held that they "could have and should have raised the issue of the validity of clauses in the SPAs before signing the full and final settlement... which they failed to do so". At paras [173] to [177], the Federal Court held that purchasers who had accepted payment of LAD as a full and final settlement, and had received vacant possession, were disentitled to remedies by reason of unconscionability, unjust enrichment and estoppel. The Federal Court could not have so held if, as the respondents contend, a full and final settlement of an accrued LAD claim were incapable in law of binding a house purchaser because the SPA is statutory in character. Carried to its logical conclusion, the respondents' argument would mean that no LAD dispute under a Schedule H contract could ever be compromised. That cannot be right. It runs counter to authority, to the scheme of the HDA, and to the public interest in the finality of settlements.

G2. *Loh Tina* Distinguished

[28] *Loh Tina* does not assist the respondents. The holdings at paras [85] to [88] of that case, namely that the purchasers could not be estopped from pursuing rights "unlawfully taken away from them in breach of the HDA and the Regulations", and that estoppel does not operate against a statute or a statutory form of contract, were made in a context where the developer had, without the Controller's certification, unlawfully modified the period for delivery of practical completion. The estoppel there invoked was one deployed to perfect an unlawful deprivation of statutory rights.

[29] This case is materially different in two respects. First, nothing has been unlawfully taken away from the respondents, or diminished. The EOT is, by the parties' own consent, recorded in the Consequential Order dated 28 April 2025, valid and binding, and 48 months is the lawful contractual period. Secondly, the appellant does not invoke estoppel in order to defeat a subsisting statutory right. It relies on an accord and satisfaction which discharged an accrued monetary claim. The maxim that there is no estoppel against a statute is directed at attempts to render lawful that which a statute prohibits, or to enlarge powers or curtail rights in defiance of a statutory command. It has nothing to say about the ordinary compromise of an accrued private claim for money. Once that is appreciated, the respondents' argument on waiver and statute loses its force.

G3. The Evidential Objections

[30] The learned JC accepted the respondents' evidence, given principally through SP1, that they did not intend the Settlement Letters to operate as a waiver of their full entitlement, and that they signed because they would otherwise have been given neither the keys nor any payment. With respect, that evidence could not in law bear the weight placed upon it, for three reasons.

[31] First, the Settlement Letters are written instruments and their terms are clear and unambiguous. A party's uncommunicated reservations about what "full and final settlement" means are beside the point. A written contract is construed objectively, and a man who signs a document knowing it to contain contractual terms is bound by it whether or not he has read or fully appreciated it, absent any vitiating factor. SP1's answer under cross-examination that "settle can be so many meanings", and his disagreement that the letters meant what they plainly said, was not admissible for the purpose for which it was led and could not in any event alter the objective meaning of the instruments.

[32] Secondly, no case of duress, coercion or unconscionable procurement of the Settlement Letters was pleaded, and none was made out. The high point of the respondents' evidence was that the keys and the money would not be released unless the letters were signed. But the simultaneous handing over of keys, payment and settlement documentation at vacant possession is the ordinary mechanics of completion. A developer who tenders payment of LAD in exchange for a discharge is not thereby applying illegitimate pressure. There was no protest at the time. Nobody signed under reservation. No complaint was made in the months that followed. Most tellingly of all, the settlement moneys were never tendered back, not even after the respondents had formed the view that they were entitled to more. A party who wishes to impeach a settlement on the ground of duress must move promptly and must not affirm the transaction by retaining its fruits. The respondents did the very opposite. They kept the money, kept the keys, occupied the parcels, and sued nine months later, when the legal landscape appeared, after *Ang Ming Lee*, to have shifted in their favour.

[33] Thirdly, the line of authority requiring "clear, unequivocal and compelling evidence" of an informed waiver, following *Hedgeford*, *Southville City*, *EUPE Bangsar South* and *Leong Keng Chiang*, must be read against the factual settings out of which it grew. Those were cases in which the LAD tendered was demonstrably an under-calculation of the purchaser's entitlement as the law then stood, or in which the developer relied on a bare receipt to defeat rights the purchaser did not know had been infringed. In such a case the court is right to scrutinise whether the purchaser truly made an informed decision to forego a known entitlement. The position here is not the same. The LAD tendered in May and June 2019 was computed precisely in accordance with the SPAs as they stood and the law as it was then understood and applied, namely, a 48-month completion period, under an EOT then unimpeached and now conceded to be valid, running from the dates of the SPAs, in accordance with the then-prevailing understanding of the commencement date, *PJD Regency* not having been decided until January 2021. At the time of settlement there was no shortfall known, or capable of being known, to be waived. What the respondents gave up, objectively, was the ordinary litigation risk which every compromise carries, including the risk, which cuts both ways, that the law may afterwards develop in favour of one side or the other.

[34] That last point deserves emphasis. A compromise is, by its very nature, an allocation of risk as to the facts and as to the law. A settlement of a genuine claim is not vitiated because a later decision shows that one party would have done better had he fought. Were it otherwise, no settlement would ever be safe, and every development in the law would reopen every concluded compromise which touched upon it. The later decisions in *Ang Ming Lee* (as to the EOT, a point the respondents have abandoned), in *PJD Regency* (as to the commencement date), and in the Partial CCC line of cases (as to the terminal date) cannot retrospectively convert a payment which was full and final when made into a part payment. The Settlement Letters placed that risk upon the respondents, and gave them immediate and certain money in return. They must take the bargain as they made it.

[35] For completeness, we do not accept the submission that the settlement sums were an under-calculation which of itself negates an informed waiver. On the law as it stood at the date of the Settlement Letters, the sums tendered were not an under-calculation at all. They were the full measure of the respondents' entitlement as it was then understood. The "balance" now claimed exists only if later decisions are applied retrospectively to a concluded settlement, which is precisely what *Obata-Ambak* forbids.

G4. Conclusion on the Settlement Letters

[36] We therefore hold that the Settlement Letters constitute a complete accord and satisfaction and a full and final discharge of the appellant's liability for LAD in respect of the parcels and the common facilities. The claims for balance LAD, whether the balance is generated by moving the commencement date back to the booking fee date, or by moving the terminal date forward to the Full CCC, or by both, are claims "arising out of or in respect of the said Parcel and/or the common facilities". They fall squarely within the words of the discharge and are precluded by it. The learned JC's conclusion to the contrary was an error of law warranting appellate intervention.

H. Unjust Enrichment

[37] The respondents submitted that there is no unjust enrichment in their claim because, unlike the purchasers in *Obata-Ambak*, they are not pursuing LAD for the EOT period. They accept the 48-month period and ask only for the correct balance under the statutory SPA. With respect, the submission does not survive examination.

[38] The Federal Court's reasoning at paras [173] to [177] of *Obata-Ambak* did not rest upon the arithmetic of the EOT period. Its foundation was broader. The purchasers had agreed to the completion period in their SPAs. Vacant possession was delivered. LAD was paid in full by the developer and accepted as a full and final settlement. The purchasers had suffered no loss beyond that for which they had been compensated. The developer had complied with the law as it stood at the material time and had not acted unconscionably. It was only after the legal landscape changed that the claims were filed, years after delivery and payment. In those circumstances the Federal Court held that the purchasers "shall not be entitled to remedies due to inequitable conduct of unconscionability, unjust enrichment and estoppel"; that there would be "injustice if the claims for LAD were allowed to be calculated retrospectively"; and that *Ang Ming Lee* "is not a carte blanche for purchasers to claim LAD retrospectively and to enjoy the financial windfall".

[39] Each of those features is present here. The respondents agreed to the 48-month completion period and now accept that it is valid. Vacant possession was delivered. The keys were taken. The parcels have been occupied ever since. LAD was paid and accepted, in terms, in full and final settlement. The appellant complied with the law as it stood: it obtained the EOT before the SPAs were signed, computed LAD in accordance with the SPAs and the then-prevailing understanding of the law, and paid it upon delivery. The respondents cashed the payments without demur. It was only after *Ang Ming Lee*, and, as regards the recalculated commencement and terminal dates now relied upon, only by force of *PJD Regency* and of later High Court authority, that the settled sum was said to be inadequate.

[40] Changing the label from "EOT LAD" to "balance LAD" does not change the substance. Either way, the purchaser seeks to keep the benefits of the settlement, the certainty of the money, the keys and possession, while shedding its burden, and to have a concluded settlement recomputed by reference to decisions which came after it. That is the financial windfall which the Federal Court declined to countenance. To permit it would enrich the respondents unjustly at the appellant's expense. The appellant paid for a discharge and obtained one. The respondents would keep the price of the discharge and recover a second time. There is, on the other hand, nothing unjust in holding the respondents to their bargain. They received everything to which the law as then understood entitled them, and they received it at once and without having to litigate for it.

I. *PJD Regency*

[41] The learned JC applied *PJD Regency* and held that the computation of LAD commenced from the date the booking fees were paid, 7 September 2013, rather than from the dates of the SPAs. Before us, the appellant sought to distinguish *PJD Regency* on its facts, relying on *Toh Ai Shi v. Talent Team Sdn Bhd & Anor* [2022] MLRHU 1380 ("*Toh Ai Shi*"), while the respondents submitted that *PJD Regency* is binding and directly in point, the booking fees having been paid to the appellant itself some 99 and 214 days before the respective SPAs were signed.

[42] We need not resolve that dispute, and we would not wish to be understood as casting the least doubt upon *PJD Regency*, which is binding Federal Court authority. We are content to assume, in the respondents' favour, that had their claims survived, LAD would have run from the dates on which the booking fees were paid. Their difficulty lies elsewhere. *PJD Regency* tells one how LAD is to be computed upon a subsisting claim. It does not tell one whether a claim subsists. A claim discharged by accord and satisfaction is not revived by a later decision refining the method of computation, any more than a settled personal injury claim is reopened by a later decision revising the conventional awards. Since the respondents' claims were extinguished by the Settlement Letters in May and June 2019, some eighteen months before *PJD Regency* was decided, the question of computation under that decision does not arise.

J. Delivery Of Vacant Possession Supported By The Partial CCC

[43] Our conclusion on the Settlement Letters disposes of the appeal. But the validity of the delivery of vacant possession on 16 May 2019 supported by the Partial CCC was fully canvassed in the parties' written submissions. It was the basis upon which the learned JC extended the LAD period to 13 September 2019 on the respondents' cross-appeal, and it is a question which recurs in housing litigation. We therefore deal with it.

J1. The Procedural Objection Under *Ikumi Terada*

[44] The respondents took a preliminary objection that the appellant's memorandum of appeal contains no specific ground alleging that the learned JC's decision on this issue was perverse or plainly wrong, and that, applying *Ikumi Terada v. Jemix Co Ltd & Ors And Another Appeal* [2020] 2 MLRA 150 ("*Ikumi Terada*"), the appellant must be taken to have accepted the finding.

[45] We are unable to accept the objection. What *Ikumi Terada* requires, that perversity be expressly pleaded in the memorandum of appeal, is directed at challenges to findings of fact, where the appellate court is asked to hold that the trial judge failed to appreciate the totality of the evidence. The endpoint of the LAD computation is not a finding of fact of that character. It is a pure question of law, turning on the construction of cls 26 and 35(c) of the SPAs and of the statutory scheme, and arising upon primary facts which are not in dispute, namely the dates of the Partial CCC, the Notices of Vacant Possession and the Full CCC. The appellant's memorandum squarely challenged the learned JC's computation of LAD and the terminal date she adopted. The point of law was fully ventilated in both courts below and in the written submissions before us. Rule 18(1) of the Rules of the Court of Appeal 1994 requires the memorandum to specify the points of law or of fact alleged to have been wrongly decided. It does not require the word "perverse" to be recited where the complaint is one of error of law. The objection is accordingly dismissed.

J2. The Merits

[46] Clause 26 of the SPAs obliges the vendor to let the purchaser into possession upon, amongst others, the issuance of the certificate of completion and compliance. Clause 26(2) provides that delivery of vacant possession shall be supported by the certificate of completion and compliance and includes the handing over of the keys. Clause 35(c) defines the certificate as one granted under the Street, Drainage and Building Act 1974 certifying that the housing accommodation has been completed and is safe and fit for occupation, and states that it does not include a partial certificate.

[47] The learned JC, following *Chau Chee Sing & Ors v. R & F Development Sdn Bhd (Encl 80)* [2021] MLRHU 1571 ("*Chau Chee Sing*"), held that a delivery supported only by Borang F1 was invalid, and that LAD accordingly ran until the issuance of the Full CCC on 13 September 2019. The appellant relied on

Tham Wai Keat (supra), where the High Court held that vacant possession is not synonymous with the CCC, the two being distinct certificates serving different purposes, and that the issuance of a Borang F1, being permitted by the by-laws, could not amount to a breach of duty or render delivery premature.

[48] In our judgment, on the facts of this case, the delivery of vacant possession on 16 May 2019 supported by the Partial CCC was valid and effective, and the learned JC erred in extending the LAD period to 13 September 2019. Our reasons follow.

[49] First, the certification regime must be read purposively. Whether it is Borang F or Borang F1 under the Street, Drainage and Building Act 1974 and the Uniform Building By-Laws 1984, the function of the certificate contemplated by cls 26 and 35(c) is one and the same in respect of the building it covers, namely to certify that the building has been duly completed and is safe and fit for occupation. That was the unchallenged evidence of the architect, SD2, whose evidence was that the purpose of issuing the CCC and the partial CCC "is the same purpose, is to certify that it is safe for occupation". By-law 25(2) of the Uniform Building By-Laws 1984 expressly empowers the issuance of a partial certificate in respect of a completed part of a development. The Partial CCC dated 2 May 2019 covered the residential blocks in which the respondents' parcels are situated. So far as the housing accommodation sold to the respondents is concerned, there was therefore in existence, at the date of delivery, a statutory certification that it was complete and safe and fit for occupation. That is the substance of what cl 26 requires.

[50] Secondly, the construction adopted below elevates form over substance and produces consequences which the statutory scheme cannot have intended. It was undisputed that the residential blocks were physically complete at the date of the Partial CCC. What remained outstanding, principally Bomba compliance, concerned the hotel block, the final phase of this mixed development, which formed no part of the housing accommodation sold to the respondents and in which they had no interest. On the respondents' construction, purchasers holding their keys and free to occupy premises certified safe for occupation would nonetheless go on accruing LAD for a further four months by reason of the incomplete state of a commercial component with which they have nothing to do. LAD under Schedule H is compensatory in design. It compensates the purchaser for being kept out of possession of his parcel and out of the enjoyment of the common facilities. It is not a penalty referable to the completion of the development at large. We respectfully prefer the approach in *Tham Wai Keat* to that in *Chau Chee Sing* and in *Wong Sii Ling & Ors v. BJ Homes Development Sdn Bhd & Ors And Another Case* [2025] MLRHU 1712 ("*Wong Sii Ling*"). In those two cases, we note, the partial certificates covered only part of the very accommodation and facilities sold, and the preamble to the SPAs there stipulated that vacant possession comprised all the blocks together with the common facilities. They are in any event distinguishable on that footing.

Here the Partial CCC covered the whole of the respondents' blocks, and the common facilities had been certified complete by the architect's letter dated 20 December 2018.

[51] Thirdly, and decisively, even if we are wrong upon the construction, the respondents' own conduct forecloses the point. They accepted the Notices of Vacant Possession, took the keys and the LAD cheques, went into possession, and signed the Settlement Letters which settled "all matters regarding the said Parcel" and the common facilities. Whether the terminal date for LAD was 2 May 2019, 16 May 2019 or 13 September 2019 was a matter squarely within the compass of that settlement. It is an ingredient of the very quantum which was compromised. Having elected to take delivery and to settle, the respondents cannot now, on the strength of decisions handed down years afterwards, unpick the delivery which they accepted in order to enlarge a claim which stands discharged.

K. The Rebate

[52] The last issue concerns the rebate granted by the appellant at the point of sale. The question is whether LAD ought to be computed on the purchase price net of the rebate, and whether the appellant's counterclaim to recover the rebate was rightly dismissed.

[53] Given our conclusion that the respondents' claims are precluded by the Settlement Letters, no balance LAD falls to be computed, and the point is strictly academic. As it was fully argued, we state our views shortly.

[54] Had a claim for balance LAD survived, we consider that its computation ought to have taken the rebate into account. In *Obata-Ambak* itself, in the Sri Damansara appeals, the High Court held that the tribunal ought to have considered the rebate because it amounted to a valid bilateral variation of the purchase price, and that by ignoring it the tribunal had unjustly enriched the purchasers to the developer's detriment. The Court of Appeal affirmed that in awarding LAD the High Court had correctly "considered and less the Rebate", and the Federal Court found that approach just and reasonable. The principle is one of coherence. LAD under Schedule H is fixed by reference to the purchase price because the purchase price is the measure of what the purchaser has laid out. Where the price actually borne by the purchaser has been reduced by a rebate, computing LAD on the gross price compensates him for an outlay he never made and confers a windfall to that extent.

[55] That, however, is a different thing from a developer seeking to claw back a rebate as a freestanding debt merely because the purchaser has sued. *Loh Tina* (at [143]) and *PJD Regency* (at [124]) hold that a rebate or discount, once given, cannot be converted into a shortfall recoverable from the purchaser, nor used to manipulate the purchase price so as to defeat the protection which the purchaser enjoys. We respectfully agree. The two lines of authority sit comfortably together. The rebate operates defensively, in the arithmetic of any

LAD actually payable (*Obata-Ambak*/Sri Damansara), but not offensively, as a sum recoverable in its own right (*Loh Tina*; *PJD Regency*). The appellant's counterclaim, in so far as it sought repayment of the rebate as such, was therefore rightly dismissed, and we affirm that dismissal. But had any balance LAD been payable, which for the reasons given it is not, it would have fallen to be computed on the purchase price net of the rebate.

L. Conclusion And Disposition

[56] To summarise our conclusions:

(a) the respondents' claims were not time-barred. The causes of action accrued upon delivery of vacant possession and completion of the common facilities under cls 25(3) and 27(3) of the SPAs, and the limitation holding in *Obata-Ambak* is confined to claims impugning the terms of the SPAs themselves;

(b) the equitable holdings of *Obata-Ambak* on full and final settlements, unconscionability, unjust enrichment and estoppel apply squarely to this appeal;

(c) the Settlement Letters are a binding accord and satisfaction which discharged the appellant's liability for LAD in respect of the parcels and the common facilities. The rule against contracting out of a Schedule H contract does not invalidate the *bona fide* post-breach compromise of an accrued LAD claim, and the maxim that there is no estoppel against a statute has no application to such a compromise;

(d) to allow the respondents to reopen and recompute a concluded settlement by reference to decisions which post-date it would confer upon them the very retrospective windfall, and work the very unjust enrichment, against which the Federal Court warned in *Obata-Ambak*;

(e) *PJD Regency* governs the computation of a subsisting LAD claim, but it cannot revive a claim discharged by accord and satisfaction before it was decided;

(f) the delivery of vacant possession on 16 May 2019, supported by a Partial CCC certifying the whole of the respondents' residential blocks as complete, was valid and effective. The learned JC erred in extending the terminal date for LAD to the date of the Full CCC; and

(g) had any balance LAD been payable, it would have been computed on the purchase price net of the rebate, although the appellant's counterclaim to recover the rebate as a freestanding debt was rightly dismissed.

[57] In the result, the appeal is allowed. The orders of the High Court dated 6 January 2025 (as clarified by the Consequential Order dated 28 April 2025) and of the Sessions Court dated 27 July 2021 are set aside in so far as they award the respondents balance or additional LAD, interest and costs, and the respondents' claims are dismissed. The dismissal of the appellant's counterclaim for the rebate is affirmed. We order the respondents to pay the appellant costs of RM30,000.00 here and below, subject to allocatur.