



Developer accountability in bad faith apartment sales: Analysis of decision no. 794/PDT.G/2022/PN.SBY

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Abstract

This research aims to analyze the responsibility of developers who do not have good intentions in implementing apartment sale and purchase agreements, with a case study in Decision No. 794/Pdt.G/2022/PN SBY. In this research, the concept of good faith in apartment sale and purchase agreements is discussed and how it is implemented in legal practice in Indonesia. This research uses a normative juridical method with a case approach and relevant laws and regulations.

The research results show that the developer in this case did not carry out good faith at the pre-contractual, contractual and post-contractual stages. This is demonstrated by developers' violations of consumer rights, such as not providing clear and correct information about the products being sold, and not fulfilling promises made in agreements. Legal analysis of the court decision shows that the developer is responsible for the losses experienced by consumers as a result of these actions.

This research concludes that consumer protection in apartment sale and purchase agreements in Indonesia still requires stricter supervision and law enforcement to ensure that developers act in good faith. The recommendation given is the need to increase socialization and education regarding consumer rights, as well as strengthening legal sanctions for developers who violate agreements.

Keywords: Developer responsibility, good faith, apartment sale and purchase agreement, consumer protection

Introduction

The term housing and apartments in this era is a basic need other than clothing and food. Therefore, with the demand for housing and apartments increasing along with the increase in population, it is necessary to handle it with careful planning accompanied by the participation of funds and resources in the community. The need for houses or apartments as residences located in urban areas continues to increase as the population increases. Housing has become a means for humans to carry out various life activities and a means to provide the main protection against various external disturbances both to climatic conditions and to other disturbances.

In Indonesia itself, the need to own a house or apartment is still a basic need that must or must be owned. In this era, not all people can afford to build or own a house or apartment to be used as a decent place to live. Therefore, many things are needed so that the house or apartment can be built and then occupied, such as the issue of financial ability to afford, the availability of land, building structures, expertise in development, and permits for the establishment of buildings in carrying out the development. Housing development activities themselves can be carried out by the government, private parties engaged in housing development, and individuals independently.

Private parties engaged in the business of building and selling housing are commonly referred to as "developers" or developers. Based on Law No. 1 of 2011 concerning Housing and Settlement Areas (hereinafter referred to as "Law No.1/2011") that housing developers are included in the category of organizers or developers of housing and settlement development whose housing and housing management is carried out by the Government, Regional Government and/or every person to guarantee the right of every citizen to occupy, enjoy, and/or own a decent house in a healthy environment, Safe, harmonious, and organized.

Developers play an important role as business actors where they buy and sell houses or apartments by providing important, clear and accurate information to consumers about the products offered, such as the type of land rights, the shape of the building condition, and the selling price. To sell the assets that you want to offer, of course, is not easy, so one of the developer's marketing strategies that will later be used to attract the interest of consumers is through advertising.

Advertising is one of the information tools for business actors to introduce their products to consumers, which is expected to influence consumers to buy the developer's products, on the other hand, consumers who will buy an offer offered are able to get an idea of the product marketed through advertising. In this case, information on a housing offer can be done in the form of being broadcast through mass media, billboards, brochures, banners, billboards, and electronic media such as television, radio, and others.

Based on Law Number 8 of 1999 concerning Consumer Protection, hereinafter referred to as the Consumer Protection Law (UUPK) Article 8 paragraph (1) letter f that business actors are prohibited from producing and/or trading goods and/or services that are not in accordance with the promises stated in the labels, etiquette, descriptions, advertisements or sales promotions of the goods and/or services.

Furthermore, Article 9 paragraph (1) letter k states that business actors are prohibited from offering, promoting, advertising a good and/or service incorrectly and/or as if offering something that contains uncertain promises. In 2020, the Indonesia Consumer Institute Foundation (YLKI) reported that the trend of complaint commodities in the housing sector in 2020 was 5.70 percent.

This can be seen in the lawsuit case between FRANSISCUS JANUAR ARDIWIRAWAN *et al* with number 794/Pdt.G/2022/PN SBY, where they are consumers of the

Puncak CBD Apartment located on Jl. Keramat I, Jajar Tunggal, Wiyung District, Surabaya, East Java 60229 suing the developer PT SURYA BUMI MEGAH SEJAHTERA and the co-defendant is the Head of the Agrarian Spatial Planning Office/National Land Agency Surabaya I at the Surabaya

District Court located on Jl. Arjuno No.16-18, Sawahan, Sawahan District, Surabaya, East Java 60251 where the content of the lawsuit is to sue with a compensation fee of 2% each to each plaintiff containing 69 plaintiff participants every month, and punishes the defendant to pay forced money (dwangsom) to each plaintiff participant in the amount of Rp 10,000,000 (ten million rupiah) where the plaintiff participants are 69 people. This can be seen in the lawsuit case between FRANSISCUSJANUAR ARDIWIRAWAN *et al* with number 794/Pdt.G/2022/PN SBY, where they are consumers of the Puncak CBD Apartment located on Jl. Keramat I, Jajar Tunggal, Wiyung District, Surabaya, East Java 60229 suing the developer PT SURYA BUMI MEGAH SEJAHTERA and the co-defendant is the Head of the Agrarian Spatial Planning Office/National Land Agency Surabaya I at the Surabaya District Court located on Jl. Arjuno No.16-18, Sawahan, Sawahan District, Surabaya, East Java 60251 where the content of the lawsuit is to sue with a compensation fee of 2% each to each plaintiff containing 69 plaintiff participants every month, and punishes the defendant to pay forced money (dwangsom) to each plaintiff participant in the amount of Rp 10,000,000 (ten million rupiah) where the plaintiff participants are 69 people.

Some things such as complaints from residents as residents write news about complaints about facilities that have been promised by the developer where the promised facilities are not in accordance with their promises and promotions that occur at the Puncak CBD Apartment located on Jl. Keramat I, Jajar Tunggal, Wiyung District, Surabaya, East Java 60229. Some of the facilities in question are GYM or fitness venues, Traditional Markets, mini markets, malls, BBQ places, International Schools and drainage.

One of the residents' representatives, Soesanto Pogalin, said that for more than 2 years the developer has not kept its promises such as providing a GYM, building a Traditional Market, building a Mall, providing a mini market, a place for BBQ, building an international school. According to Soesanto, GYM, Mall, Traditional Market, BBQ place, mini market that should have existed from the beginning, but in reality it is not as suitable as in the brochure.

Furthermore, from the problem of increasing IPL where there is no negotiation with the consumer so that there is a unilateral termination. By the developer in raising the IPL where at that time there were no facilities promised in 2021 and the formation of PPPSRS that the developer wanted to control where it should be controlled by the owner or occupants. In addition, at that time when the owners asked about the SLF and IMB where the residents occupied, all the requirements such as the SLF Letter were not made. Soesanto said that residents had contacted directly the representative of the developer, namely PT Prima Kelola Utama, but they were only responded to coldly and pointed at each other to colleagues around and always said that this was an order from the CENTER where the CENTER in question was PT Surya Bumi Megah Sejahtera, and in PT Prima Kelola Utama there was also no Head of Person in Charge of the PT that was being managed.

Furthermore, when the residents asked PT Surya Bumi Megah Sejahtera which is located on Jl. Mayjend Sungkono No. 127., Sawahan District, Jl. Mayjen Sungkono No.127, Hamlet, Dukuhpakis District, Surabaya, East Java 60225, the answers obtained by the residents were not satisfactory and there was always a throw of responsibility between PT Surya Bumi Megah Sejahtera and PT Prima Kelola Utama, where when the residents decide to postpone the payment of IPL, the developer arrogantly turns off the electricity belonging to the residents. In addition, there are also other problems where the clarity of the certificate that should belong to the residents but is not obtained and is still in the form of PPJB. and also the problem in the BAST agreement (Handover Minutes) where the content of the agreement in it as a whole requires the residents to carry out their obligations but from the part of the developers do not want to carry out their duties so that overall it is detrimental to the residents as consumers.

Problem Formulation

- A. What are the characteristics of good faith in the implementation of apartment buying and selling based on Decision No. 794/Pdt.G/2022/PN. Sby?
- B. What is the form of developer responsibility related to rights and obligations as stated in the apartment advertisement brochure?

Methods

Research Methods

This type of research is a normative research that uses a legal approach so that this research examines social phenomena due to existing legislation. The approach method used in the approach uses legislation and regulations. This research is a Statue Approach. This approach is used because in the discussion in this thesis will refer to the Law.

Legal Materials

The legal materials used in writing this thesis can be divided into 2, namely primary legal materials and secondary legal materials. Primary legal material is material that includes laws and regulations related to the problems in this research. While secondary legal materials are materials that clarify primary legal materials such as books, journals, articles, etc.

Discussion

1. Characteristics of Good Faith in the Implementation of Apartment Sale and Purchase Agreement in Decision 794/Pdt.G/2022/Pn.Sby

Article 1338 paragraph 3 of the Civil Code, states that an agreement must be carried out in good faith. Good faith at the time of making an agreement means honesty, so good faith in the implementation stage, namely, the agreement is propriety, which is an assessment of the actions of a party in terms of carrying out what is agreed. An agreement either at the beginning of the agreement or at the time of the implementation of the agreement, the party in good faith and acts honestly and complies with it needs and must receive legal protection while according to the author, the party in good faith does not need to receive legal protection (without ignoring and reducing the importance of matters as stipulated in article 549 of the Civil Code.

The principles of good faith, fair dealing, fairness, and propriety are fundamental principles in the business world.

The ideal good faith is with ethical principles such as honesty, loyalty, and fulfillment of commitments. Sutan Remy Sjahdeini described good faith as the intention of one party in an agreement not to harm the promised partner or harm the public interest. According to classical theory, the principle of good faith applies only at the moment of signing and execution of the contract. On the other hand, according to the modern view of contract theory, pre-contractual promises must be based on good faith, so that the party who breaks the promise can be demanded to pay compensation based on unlawful acts so that the compensation provided is only real losses, or also called reliance damages, which is the price that has been paid by the buyer. The regulation of good faith in Indonesia is contained in Article 1338 Paragraph (3) of the Civil Code. This article stipulates that the agreement is executed in good faith.

The requirements for good faith in the buying and selling process between the parties involved are as follows

- a. The sale and purchase contract is carried out in good faith by the parties According to Article 1338 of the Civil Code, a contract must be executed in good faith (goeder trouw, bona fide). The formulation of Article 1338 paragraph (3) indicates that in fact good faith is not a valid condition of a contract as contained in Article 1320 of the Civil Code. The element of good faith is only required in terms of the "performance" of a contract, not in the "deeds" of a contract. A contract can be made legally, if it meets all the conditions for the validity of the contract (among other things in accordance with Article 1320 of the Civil Code), and therefore the contract is made in good faith, but in its implementation, for example, it is deflected in a direction that is detrimental to one of the parties or to the detriment of a third party.
- b. The contract of sale and purchase must be in accordance with the principle of propriety for this, the application of the principle of propriety to a contract contains two functions as follows: The function that prohibits a contract that contains elements that are contrary to the principle of propriety cannot be justified. For example, it is forbidden to make a money loan contract with a very high interest. This very high interest rate is contrary to the principle of reasonableness. Functions that add On the other hand, a contract can also be supplemented with or executed in accordance with the principles of propriety. This is the position of the principle of propriety is to fill the void in the implementation of a contract, without which the purpose of making the contract cannot be achieved. For example, for a sale and purchase contract (which is paid later) it is not clear who bears the risk of inflation/currency devaluation, then it is in accordance with the principle of "propriety" if in court the judge interprets that the risk of inflation/de.
- c. The sale and purchase contract does not violate the principle of public interest an act and performance of a contract must not violate the principle of public interest (openbaar orde). Because it is in accordance with the universal and very basic legal principle that personal interests. Therefore, if there is a contract that is contrary to the interest/public order, then the contract is definitely contrary to the applicable law, which according to Article 1339 of the Civil Code is not

justified. Berkaitan dengan hal tersebut, prinsip itikad baik perlu diterapkan dalam proses jual-beli apartemen.

When a prospective buyer decides to buy an Apartment Unit, the ownership rights that will be obtained are the Right to the Flats Unit which is also the right to the common parts, common objects in the flats area, and the common land on which the apartment is built which details will be listed in the Transaction and Certificate of Ownership of the Flats Unit (SHMSRS). Article 1 number 5 of Law No. 20 of 2011 concerning Flats formulates that the common part is a part of the flat that is owned separately and not for joint use in a functional unit with the units of the flats. The explanation of Article 25 paragraph (1) of the law gives examples of common parts including: foundations, columns, beams, walls, floors, roofs, gutters, stairs, elevators, hallways, channels, pipes, Electricity, gas and telecommunication networks. Article 1 number 6 of Law No. 20 of 2011 defines that a common object is an object that is not part of. Furthermore, the Explanation of Article 25 paragraph (1) gives an example of a common object is; meeting rooms, plants, landscaping buildings, social facility buildings, places of worship, playgrounds and parking lots that are separate or integrated with the structure of the apartment building.

The permits that must be owned by developers at the time of launching (pre-development) are zoning permits which are usually called City Planning Certificates (SKRK) or Location Permits, AMDAL (Environmental Impact)/UKL/UPL, and Building Permits (IMB). A City Plan Certificate/Zoning Permit is a permit needed to find out the requirements for the spatial planning intended for the land where the business is located. The SKRK is issued in accordance with the spatial planning policy set by the local government and the central government. In some areas, SKRK is designated as the first permit that must be fulfilled before being able to take care of other basic permits.

For the Status of Land Rights in Joint Land, the developer must be able to guarantee that the land to be built is no longer problematic or in the sense that it is still in the process of land acquisition or at least has been fully controlled by the developer, which can be proven by the Deed of Sale and Purchase or land certificate in the name of the developer. Article 1 number 11 of Law No. 20 of 2011 reads, "The certificate of ownership of the sarusun, hereinafter referred to as SHM sarusun, is a sign of proof of ownership of the sarusun on the land of ownership, the right to use the building or the right to use on state land, as well as the right to use the building or the right to use on the land of the management right." For apartment units, of course, in accordance with the nature of the certificate, namely Hak Ownership, the owner of the apartment is the owner of the apartment unit for an unlimited period of time with a record that the installments have been paid in full as evidenced by a sealed receipt of payment. As for the status of joint ownership of land.

Then if the zoning permit, IMB, and land rights status have been asked and answered, then ask about the timeline of apartment construction, prospective buyers have the right to know the developer's timeline for the construction of their apartment, starting from Piles / Ground Breaking, Topping Off, to the Handover Stage. In practice, the developer will inform potential buyers or marketers about the timing of the

Pile Breaking and Handover at launch. For the Handover time, the Handover tolerance limit, and the consequences that follow if the developer is late or even unable to carry out the Handover, it will usually be regulated in detail in the Sale and Purchase Binding Agreement (PPJB).

Based on the above understanding, it can be concluded that an apartment must have several characteristics

- a. The building has more than two floors and is shaped like a tower upwards
- b. Each floor of the building has several residential units
- c. Buildings that have a vertical shape so that in their land use can be maximized
- d. Buildings built in strategic locations, with public facilities and infrastructure
- e. The residence is considered exclusive because not just anyone can enter
- f. Structures and building materials are made with good materials so that they can last for a long time, resistant to extreme weather.

In this regard, the principle of the implementation of flats according to Article 2 of the Law on Flats (hereinafter referred to as "Law No. 20 of 2011") is

- a. Welfare is a condition for the fulfillment of the needs of decent flats for the community to be able to develop themselves so that they can carry out their social functions.
- b. Justice and equity, is to provide development results in the field of flats so that they can be enjoyed proportionally and evenly for all people.
- c. Nationality is to provide a foundation so that the ownership of the sarusun is used as much as possible for the national interest.
- d. Affordability and convenience, is to provide a foundation so that the results of the construction of flats can be reached by all levels of society, as well as encourage the creation of a conducive climate by providing convenience for low-income people.
- e. Efficiency and usefulness, is to provide the foundation for the implementation of flats which is carried out by maximizing the potential of land resources, design technology, and a healthy building materials industry and providing the greatest benefits for the welfare of the people.
- f. Independence and togetherness is to provide the foundation for the implementation of flats based on initiative, self-help, and community participation so that they are able to build their own trust, ability, and strength as well as the creation of cooperation between stakeholders.
- g. Partnership, is to provide a foundation for the implementation of flats by the Government and local governments by involving business actors and the community with the principle of mutual support.
- h. Harmony and balance is to provide a foundation for the implementation of flats to be carried out by realizing harmony and balance in the pattern of space use.
- i. Integration, is to provide a foundation for flats to be organized in an integrated manner in terms of policies in planning, implementation, utilization, and control.
- j. Health, is to provide a foundation for the construction of flats to meet healthy house standards, environmental health requirements, and healthy living behaviors.
- k. Sustainability and sustainability is to provide a foundation for flats to be organized by maintaining

environmental balance and adjusting to increasing needs in line with the rate of population growth and land limitations.

- l. Safety, comfort, and convenience, is to provide a foundation for apartment buildings to meet safety requirements, namely the ability of apartment buildings to support load loads, fire hazard security, and lightning hazards; requirements for space comfort and movement between spaces, air conditioning, view, vibration, and noise; as well as requirements for ease of communication to, from, and inside the building, the completeness of infrastructure, and facilities of flats including facilities and accessibility for people with disabilities and the elderly.
- m. Security, order, and order, is to provide a foundation so that the management and utilization of flats can guarantee the building, the environment, and its occupants from all disturbances and security threats; order in carrying out their residential life and social life; and regularity in the fulfillment of administrative provisions. Definition of apartment maintenance.

2. Forms of Developer's Responsibilities Related to Rights and Obligations as Stated in the Apartment Advertising Brochure

In this era, the increase in population is increasing, causing the need for housing to be higher. This is an opportunity for investment, because of the high need for housing. One of the most profitable invitations to live in is houses, land and apartments which are called property. The value of property every year always increases due to the high demand for housing while the supply of property is limited.

The need for this place to live is a profitable opportunity if you own a property. Profits can be obtained in various ways such as reselling owned properties in the coming year. Property owners can also benefit by renting out properties to their tenants. Developers will be involved from the initial process, namely land purchase, construction stage to marketing the project to potential consumers. After successfully adding value or value to a property, the property developer will realize its main goal, which is to get profits with the values that have been invested in the building.

According to Article 6 of the Consumer Protection Law Number 8 of 1999, it also regulates the rights that must be exercised by property developers as business actors, which include, among others

- a. The right to receive payment in accordance with the agreement regarding the conditions and exchange rates of the goods and/or services traded;
- b. the right to legal protection from bad faith consumer actions;
- c. the right to self-defense in the legal settlement of consumer disputes;
- d. The right to rehabilitation of good name if it is legally proven that consumer losses are not caused by the goods and/or services traded;
- e. Rights regulated in the provisions of other laws and regulations.

In addition, Article 7 of the Consumer Protection Law also regulates the rights that must be exercised by developers to consumers, which include, among other things

- a. In good faith in carrying out their business activities;

- b. provide true, clear and honest information regarding the condition and warranty of goods and/or services and provide explanations of use, repair and maintenance;
- c. treats or serves consumers correctly and honestly and without discrimination;
- d. Ensuring the quality of goods and/or services produced and/or traded based on the provisions of the applicable quality standards of goods and/or services;
- e. providing opportunities for consumers to test, and/or try certain goods and/or services and providing guarantees and/or guarantees for goods made and/or traded;
- f. compensate, indemnify and/or reimburse for losses resulting from the use, use and utilization of goods and/or services traded;
- g. Provide compensation, compensation and/or reimbursement if the goods and/or services received or utilized are not in accordance with the agreement.

Based on the provisions of Law No. 20 of 2011 concerning Flats, it is explained that the rights and obligations of apartment developers include

1. Article 16 paragraph (2) the actor of the construction of commercial flats as intended in paragraph (1) is obliged to provide public flats at least 20% (twenty percent) of the total floor area of the commercial flats built.
2. Article 22 paragraph (3) In the event that the construction of an apartment is carried out on land with building use rights or use rights above management rights as intended in Article 17 letter c, the development actor is obliged to complete the status of building use rights or use rights above management rights in accordance with the provisions of laws and regulations before selling the relevant sarusun.
3. Article 25 paragraph (1) in building flats, the developer is obliged to separate the upper flats, common parts, common objects, and common land.
4. Article 30 The development actor after obtaining the permit as intended in Article 29 paragraph (2) and paragraph (3) is obliged to request approval from the local government regarding the application that shows the clear boundaries of each sarusun, common part, common object, and common land along with the description of the NPP.
5. Article 39 paragraph (1) the construction actor is obliged to submit an application for a certificate of functional fitness to the regent/mayor after completing all or part of the construction of the flats as long as it does not conflict with the IMB.
6. Article 40 paragraph (1) the development actor is obliged to equip the flats environment with infrastructure, facilities, and public utilities.
7. Article 52 Every person who occupies, occupies, or owns a sarusun is obliged to use a sarusun in accordance with its function
8. Article 59 (1) Development actors who build owned public flats and commercial flats during the transition period before the formation of PPPSRS are obliged to manage the flats.
9. Article 61 (1) Quality improvement must be carried out by the owner of the apartment building which: a. is not functional and cannot be repaired; and/or b. may cause danger in the use of the flats building and/or the environment of the flats.
10. Article 74 paragraph (1) the owner of the arusun is obliged to form a PPPSRS.

Advertising business actors are responsible for the advertisements produced and all consequences caused by the advertisements. Based on Law Number 8 of 1999 article 20 concerning Consumer Protection, advertising business actors have the responsibility to ensure that the advertisements presented are in accordance with the content of the agreement and do not mislead consumers. If the advertisement does not conform to the content of the agreement or is misleading, the consumer dispute resolution body is authorized to impose administrative sanctions on business actors who violate these provisions. Therefore, developers must ensure that promotions in the form of brochures comply with regulations and do not mislead consumers.

The form of responsibility of apartment developers to consumers is based on decision number 794/PDT. G/2022/PN SBY can be explained as follows

- a. Fulfillment of Obligations in the Agreement: The developer is obliged to fulfill all obligations that have been agreed upon in the apartment purchase and sale agreement. This includes building specifications, promised facilities, as well as unit handover times.
- b. Delay in Handover: In the event of a delay in the handover of apartment units, the developer must be responsible and compensate consumers in accordance with the terms agreed in the agreement. Court rulings often emphasize the importance of timeliness in the handover of units, and developers must compensate consumers for losses suffered as a result of the delay.
- c. Building Quality and Specifications: The developer is responsible for ensuring that the building handed over to the consumer is in accordance with the promised specifications. If there are non-conformities or defects in the building, the developer is obliged to make repairs or compensate consumers. Court rulings in these cases often emphasize the importance of transparency and honesty of developers in providing information related to building quality.
- d. Promised Facilities: Developers must provide all the promised facilities to consumers, such as public facilities, parks, swimming pools, and others. If the facility is not provided or does not meet the promise, the developer must take responsibility and provide a reasonable solution or compensation.
- e. Maintenance and Maintenance: After the handover of the unit, the developer remains responsible for the maintenance and maintenance of the shared facility for a certain agreed period. This includes the maintenance of buildings, security systems, and other public facilities. Neglect of this maintenance may result in the developer being liable for any damage or loss experienced by the consumer.
- f. Dispute Resolution: Developers must also provide consumers with fair and transparent dispute resolution mechanisms. In the event of a dispute, the developer must be prepared to follow legal procedures and resolve the issue in a fair manner and in accordance with applicable regulations.

Based on decision number 794/PDT. G/2022/PN SBY, the court affirmed that the developer must be fully responsible for its obligations to consumers. Failure to meet this obligation may result in the developer having to provide financial compensation or other forms of compensation to

consumers. This ruling emphasizes the importance of developer compliance with applicable agreements and regulations, as well as consumer rights that must be protected.

For middle-class people, they often take advantage of apartments and housing complexes with quite promising facilities at skewed prices. Unfortunately, situations like this are often taken advantage of by developers of apartments and housing complexes to take the maximum profit, even found in various regions, irresponsible developers, especially in densely populated areas such as Jakarta. The densely populated condition of Jakarta, both native Jakarta and residents from outside Jakarta, is a good target for rogue developers who only want to make a profit without realizing what has been promised to consumers.

Generally, these rogue developers are very aggressive in promoting and advertising products that will be built by promising attractive facilities such as building shopping centers, children's schools, gym facilities and facilities that are very helpful for workers who do not have much time or are busy. These developers always include the promised things in advertisements that are spread through mass media, brochures, billboards or other media advertising service providers. The dense population in Jakarta forces people to look for alternative places to live so that tempting offers from rogue developers make people interested so that they get caught up in the games played by these rogue developers and ultimately harm the community as consumers.

In cases like this, developers as business actors can be charged with the applicable laws in Indonesia, as a form of Consumer Protection efforts facilitated by the State. The legal sanctions for rogue developers as described above, can be in the form of Civil and/or Criminal sanctions.

This can be assumed to the Developer in the event that there is an element of loss to others committed by the Developer by providing incorrect information through mass media, brochures, billboards or other media. This information can make consumers wrong in choosing the goods they want.

In addition, Developers can also be charged with Article 9 paragraph (1) of the UUPK which reads, "Business actors are prohibited from offering, promoting, advertising a good and/or service incorrectly, and/or as if offering something that contains uncertain promises". For business actors who still violate the provisions of article 9, they can be punished with article 62 paragraph 1 of the UUPK concerning Consumer Protection which states "Business actors who violate the provisions as referred to in article 8, article 9, article 10, article 13 paragraph (2), Article 15, Article 17 paragraph (1) letter a, letter b, letter c, letter e, paragraph (2), and Article 18 is punishable by imprisonment for a maximum of 5 (five) years or a maximum fine of Rp 2,000,000,000.00 (two billion rupiah)". In the violation included in article 62, imprisonment or material and immaterial fines as well as additional penalties may be imposed. For additional punishments, it is explained in article 63, namely

1. Confiscation of certain goods;
2. Announcement of the Judge's Decision;
3. Payment of Indemnity;
4. order to stop certain activities that cause consumer losses;
5. obligation to withdraw goods from circulation; or
6. Revocation of Business License.

In addition to the prison sentence in Article 62 of the Criminal Code, Article 378 of the Criminal Code (KUHP) can also be used to punish the body (prison sentence). The content of Article 378 reads, "whoever with the intention of benefiting himself or others unlawfully, by using a false name or false dignity, by deception, or a series of lies, moves another person to hand over goods according to him, or to give a debt or write off a receivable, is threatened with fraud with a maximum prison sentence of four years". Against this, the "series of lies" is a very suitable element to prejudice that the developer who provides false information deceives consumers.

If there has been a dispute between business actors and consumers, the consumer can resolve the dispute through litigation or dispute resolution outside the court. In out-of-court dispute resolution, which can be through the Consumer Dispute Settlement Agency (hereinafter referred to as "BPSK"), business actors and consumers will make an agreement on the amount of compensation or other agreements that have been agreed upon by both parties. If both parties object to the agreement or the agreement is violated, the dispute can be resolved through litigation through the general court.

The general court can enter into criminal and civil proceedings, because there are losses arising from the dissemination of incorrect information. The criminal and civil processes in this case can go hand in hand because there is no prior proof in civil cases.

To avoid disputes, it's a good idea for consumers to check the reputation of the developer first, whether the developer concerned has ever had a history of disputes with consumers or not and whether the developer is listed as a problematic developer or not so that consumers do not suffer losses in the future. If the consumer suffers a loss, the consumer has the right to claim compensation for the losses experienced by the consumer through BPSK or the scope of the general court.

Conclusion

Based on the results of the research as described in the previous chapters, the following conclusions can be drawn

- a. Characteristics of good faith in the implementation of apartment buying and selling based on Decision No. 794/Pdt.G/2022/PN. Sby covers several important aspects. First, information disclosure, where developers must provide complete, accurate, and transparent information to consumers regarding technical specifications of buildings, facilities, and development schedules. Second, compliance with the agreement, which requires the developer to fulfill all obligations listed in the sale and purchase agreement, including the timely completion of construction and the fulfillment of building specifications. Additionally, developers must demonstrate responsibility in handling consumer complaints and resolving issues that arise quickly and efficiently. The court in the ruling affirmed that the developer in good faith will strive to protect consumer rights and ensure that all promises made in the agreement are kept. Good faith also means that the developer is fair and does not practice practices that are detrimental to consumers, both in the buying and selling process and after the handover of the unit. Thus, good faith is a key element in creating a harmonious and mutually beneficial relationship between developers and consumers.

- b. The form of developer responsibility related to rights and obligations as stated in the apartment advertising brochure includes several main aspects. First, developers must ensure that all information conveyed in the advertising brochure is accurate and accountable. It includes building specifications, facilities provided, prices, and unit handover schedules. Secondly, the developer is obliged to fulfill all the promises made in the advertising brochure. If there is a discrepancy between the ad and reality, the developer should take steps to correct or compensate the consumer. Additionally, developers must be transparent in communicating any changes or delays that may occur after a consumer has made a purchase. Courts often assert that advertising brochures are part of the contract between the developer and the consumer, so the developer must act in good faith and take full responsibility for the information that has been submitted. Thus, the responsibility of developers in this regard includes not only fulfilling promises, but also ensuring the satisfaction and protection of consumer rights as a whole.

Suggestion

Based on the results of the research as described in the previous chapters, the suggestions put forward by the author are

- a. Government based on this conclusion, the government needs to strengthen regulations that regulate apartment buying and selling transactions, ensuring that developers provide complete and accurate information to consumers. Oversight and enforcement should be enhanced to ensure developers' compliance with applicable agreements and standards. In addition, the government must educate consumers about their rights in apartment buying and selling transactions through an information campaign that is easily accessible. For apartment business actors, transparency and information disclosure must be the top priority. The developer must commit to fulfilling all obligations listed in the sale and purchase agreement, including the timely completion of construction and the fulfillment of building specifications. Developers also need to demonstrate responsibility by handling consumer complaints quickly and efficiently, and ensuring that all business practices are conducted in good faith to create a harmonious and mutually beneficial relationship with consumers.
- b. The Government needs to strengthen the regulations that govern apartment advertising and promotion to ensure that all information submitted to consumers is accurate and accountable. Strict oversight should be implemented to ensure developers comply with applicable advertising standards and provide strict sanctions for violations. The government must also provide an effective complaint mechanism for consumers who feel aggrieved by misleading advertisements. For apartment business actors, it is important to ensure transparency and accuracy in all promotional materials. Developers must commit to fulfilling all the promises set forth in the advertising brochure and provide appropriate compensation in the event of non-conformities. In addition, developers must be proactive in communicating any changes or delays

that occur, as well as ensuring that all communication with consumers is done in good faith and with high professionalism. This will help build trust and create a harmonious relationship with consumers.

Reading List

Laws and Regulations

- Law Number 1 of 2011 concerning Housing and Residential Areas
 Law Number 8 of 1999 concerning Consumer Protection
 Law Number 20 of 2011 concerning Flats
 Law Number 27 of 2022 concerning Personal Data Protection

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