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ANALYSIS OF CONSUMER LEGAL PROTECTION OVER CONSUMER HOUSE CERTIFICATE GUARANTEE BY DEVELOPER TO BANK IN THE CASE OF PT. ACK

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Abstract

Problems in the housing sector often position consumers in a weak position, especially in legal relationships involving developers who are in default against banks. This research aims to analyze the legal position of consumers in housing transactions in the context of consumer certificates guaranteed by developers to banks and the forms of legal protection that can be provided to consumers. The research method used is normative research with a statutory and conceptual approach. The research results show that the position of consumers in the Sale and Purchase Agreement is still weak and expectant because the rights owned by consumers are not yet full material rights, so consumers cannot yet be called the holder of ownership rights to the housing unit. This condition makes consumers vulnerable to developer default and disputes with third parties such as banks as creditors holding mortgage rights. Therefore, comprehensive legal protection is needed, both preventive and repressive, which can be realized through clear regulations, monitoring the implementation of agreements, and effective dispute resolution procedures. This research emphasizes the importance of strengthening the position of consumers in order to realize legal certainty and legal protection for housing consumers.

KEYWORDS
Consumer Housing, Default Developers, Bank Guarantees, Consumer Legal Position, Consumer Legal Protection

Introduction

Home is a basic need for all people in the world and is part of Human Rights (HAM)[1] which is protected by the UN (United Nations) through the 1948 UDHR (Universal Declaration of Human Rights) and 1966 ICESCR (International Covenant on Economic, Social and Cultural Rights).[2] A house itself can be defined as a building that has the function of being a place to live that is suitable for habitation, as a means of building a family, as a symbol of honor and status for its residents, as well as an asset for its owner. Apart from being a physical building, a house also includes supporting facilities such as water, roads and public services. Houses are not only used for human habitation needs, but also contain social and economic aspects. The social aspect of the house can be seen from the function of the house as a means for human gathering as social creatures, for example a family living in the same house and seen from how the house can create certain social strata in society. Meanwhile, the economic aspect of the house is drawn from the value of the house which can provide economic value for the owner.

Housing is one form of fulfilling the need for a place to live, which is a basic human need apart from the need for clothing and food. The Indonesian government itself has recognized in Law Number 39 of 1999 or the Human Rights Law (HAM) which makes residence one of the rights of

[1] Anna Oleńczuk-Paszel and Agnieszka Sompolska-Rzechuła, "Housing Conditions and the Quality of Life of the Populations of the European Union Countries," *Sustainability* 17, no. 4 (2025): 1-25, https://doi.org/10.3390/su17041550.

[2] Nguyen Van Hoi and Nguyen Thi Hong Yen, "Right to Access Social Housing in the Perspective of International Human Rights Law and Vietnam's Regulations," *Journal of Southeast Asian Human Rights* 8, no. 2 (2024): 288-313, https://doi.org/10.19184/jseahr.v8i2.45021.

every Indonesian citizen (WNI) and every person. Apart from that, the government has also issued regulations related to housing through Law Number 1 of 2011 and consumer protection regulations, namely Law Number 8 of 1999. Both laws emphasize that consumers have the right to security, comfort and legal certainty in obtaining goods or services, including in the case of buying and selling housing. However, it turns out that there are still challenges in the practice of enforcing housing consumer protection, especially when it comes to legal relationships involving more than two parties.

An example of real housing transaction practice involving consumers with developers and banks is the case of PT. ACK (Agung Citra Khasthara) with the object of the dispute being 66 (sixty six) subsidized housing units at Punsae Housing located in Kalongan Village, West Ungaran District, Semarang Regency, Central Java.[3] Based on information from the website indocontractor.com, PT. ACK is a development company from Kudus Regency, Central Java. PT. ACK then ran a subsidized house business using a pre-project selling system by making PPJB in the transaction process. But without consent and without the consumer knowing, PT. ACK as the developer apparently has used the consumer's house certificate as an object of credit collateral to the bank. In fact, the consumer's house certificate should be separated from the SHGB (Building Use Rights Certificate) as a sign of ownership in the name of each consumer who buys a housing unit at Punsae Housing. As a result of the developer's breach of contract, consumers who have paid their payments or who have occupied housing units must also be prepared to face legal risks if the developer is proven to be in default against the bank.

Ideally buying and selling housing should be able to provide legal certainty and protection for consumers as the weaker party in legal relations

[3] Dian Ade Permana and Gloria Setyvani Putri, "Agunkan 66 Sertifikat Senilai Rp 11,7 Miliar, Pengembang Ungaran Asri Regency Ditahan," *KOMPAS.com*, last modified on Juny 19 2025, https://regional.kompas.com/read/2025/06/19/130630078/agunkan-66-sertifikat-senilai-rp-117-miliar-pengembang-ungaran-asri-regency.

with business actors.[4] One of these legal certainties is related to the consumer's legal status as the legal owner of a housing unit, which in this case will go through several levels of legal relations starting from the PPJB (Sales Purchase Agreement) to then APJB (Sales Purchase Binding Deed) before giving birth to the SHM (Ownership Certificate).[5] Consumer of PT. ACK is a consumer who is willing to follow the buying and selling procedures through PPJB which, if the contents are appropriate, then the consumer should be entitled to get AJB & SHM. Consumer PT. ACK has also fulfilled its obligations in paying off the house according to the PPJB, so consumers should have assurance that the object purchased is not being used as collateral or encumbered with mortgage rights by other parties. This is none other than to fulfill consumer protection objectives, namely to ensure transparency, accountability, and a balance of rights and obligations between consumers and business actors in the housing industry.

Punsae Housing legal problems began to emerge after consumers received threats of a collateral auction by the bank which was planned to be held on May 16 2025.[6] Consumers who had not previously been informed that PT. ACK has actually placed a mortgage on the housing unit certificate that was agreed upon, making consumers have to face the legal consequences. This situation is also unpredictable because PT. ACK in the PPJB doesn’t mention that the consumer's house certificate which was promised to be separated from the SHGB of the Punsae Housing land has apparently been pledged to the bank, thus leaving the consumer with no legal certainty. In this way, several legal issues arise related to the consumer's position regarding the house certificate that they have

[4] David M.L. Tobing, *Klausula Baku: Paradoks dalam Penegakan Hukum Perlindungan Konsumen* (Jakarta: PT Gramedia Pustaka Utama, 2019).
[5] Urip Santoso, *PENDAFTARAN DAN PERALIHAN HAK ATAS TANAH* (Jakarta: Kencana, 2010).
[6] Maria Novena Sinduwara, “Kronologi Warga Perumahan Punsae Ungaran Diduga Jadi Korban Penipuan, Sertifikat Rumah Digadai Pengembang,” *RADARSEMARANG.ID*, last modified on March 16 2025, https://radarsemarang.jawapos.com/ungaran/725771024/kronologi-warga-perumahan-punsae-ungaran-diduga-jadi-korban-penipuan-sertifikat-rumah-digadai-pengembang.

purchased, but which has also been guaranteed by the developer to the bank and what form of legal protection can be provided to the consumer if a dispute occurs between the developer and the bank.

The problem also becomes more complicated when a legal gap occurs which shows differences in the provisions regarding the transfer of land rights through the Basic Agrarian Law and its implementing Government Regulations and the legal provisions issued by the Supreme Court (MA) in the Supreme Court Circular Letter (SEMA). This situation is almost similar to the public's perception in previous research where quite a few people did not understand the PPJB concept well.[7] This can also show the difference between theory and phenomena that occur in society where, although social practice (*de facto*) and modern property transactions often consider PPJB buyers as owners, positive law (*de jure*) only recognizes the transfer of rights through AJB. In fact, what should be emphasized here is the good faith of developers in fulfilling their obligations as business actors so that consumers can obtain legal certainty regarding their position as property rights holders in SHM as well as to realize consumer legal protection.

There are several previous studies that have examined consumer legal protection in the housing industry, including those relating to default by developers, delays in handing over houses, non-compliance with specifications, and disputes in PPJB. However, the majority of research still focuses on the legal relationship between the developer and the consumer or only on the elements of the housing sale and purchase agreement between the two parties, without relating it to the situation when the consumer's home certificate which has been paid off turns out to be guaranteed by the developer to the bank. Research that specifically discusses consumer legal protection in these conditions can be said to be still relatively limited.

[7] Zora Febriena Dwithia H.P., "Penyuluhan Hukum Masyarakat tentang Perjanjian Pengikatan Jual Beli," *Jurnal Dedikasi Hukum* 1, no. 2 (2021): 135-143, https://doi.org/10.22219/jdh.v1i2.17356.

The novelty of this research lies in the material reviewed, namely analyzing the position and legal protection of consumers in terms of guaranteeing consumer home certificates by developers to banks. Apart from that, this research will discuss the principle of good faith as a principle of agreement as regulated in Article 1338 of the KUH Perdata which can later determine the legitimacy of parties who deserve to be protected by law. This research also not only examines the legal relationship between consumers and developers that emerged from PPJB, but also discusses PPJB as a contractual agreement that indirectly gives rise to 'expectative ownership' which has not been explained explicitly in Indonesian agrarian law. In this way, it is hoped that this research can provide a new perspective in understanding the legal status or position of consumers in housing transactions involving more than two parties.

If this legal issue is not analyzed in depth, there are several potential concerns that could cause legal uncertainty for the community, especially housing consumers. Consumers' ignorance of positive law is a violation of the principle of fiction, so this is an indication of the legal uncertainty that occurs. In fact, as people who live in Indonesia as a country of law, it is natural for people to be protected by law, including housing consumers. Consumers who are at risk of losing rights to the house they have purchased or are involved in legal disputes between developers and banks will not only suffer material losses, but can also trigger a decline in the level of public trust in the laws in force in Indonesia, especially regarding the housing industry.

The benefit of conducting this research is that it provides knowledge and an overview regarding the position or legal status of consumers if a dispute occurs involving the developer and the bank. The aim itself is to analyze and emphasize how important legal knowledge regarding consumer protection is in the housing industry in Indonesia. It is hoped that the research results will make an important contribution to innovation in housing law and consumer protection law. Apart from that, it is also hoped that this research can provide recommendations for policy makers, law enforcement officials, and business actors in the property industry in creating a more effective system to protect housing consumers.

Based on the description above, it can be said that research on consumer legal protection for guaranteeing house certificates by developers to banks is an important and relevant issue to research. Drawing from this urgency, the problem that can be formulated in the research is related to the legal position of consumers regarding house certificates that have been purchased and what efforts to protect consumers legally when the certificate is used by the developer as collateral for a debt to the bank. By paying attention to the principle of good faith between consumers and developers, these two issues require a comprehensive analysis in order to find legal solutions to be able to provide legal certainty and protection, especially for housing consumers.

Methods

This legal research applies normative research methods with a research focus on positive legal norms that regulate the protection of housing consumers, namely Punsae Housing consumers who are disadvantaged by developers because they guarantee the consumer's housing unit certificate. The normative method was chosen because this research aims to analyze applicable legal regulations and principles and to assess how effective these legal norms are in providing legal protection and legal certainty for consumers.

The first approach used in this research is a legislative approach by examining statutory regulations regarding agreements, consumer protection, housing, transfer of land rights, even the Civil Code as the most general basis for private law. The next approach is a conceptual approach by studying the principle of good faith as one of the principles of individual rights[8] to guarantee legal certainty in order to realize consumer protection. This research also uses a comparative approach by comparing the provisions used in similar cases of housing consumers who were harmed by developers.

The legal materials used in this research include primary, secondary and tertiary legal materials. Primary legal materials consist of laws and regulations relating to agreements, consumer protection, housing, transfer of land rights, and so on. Secondary legal materials include books, scientific journal articles, and previous research relevant to the topic raised. Meanwhile, tertiary legal materials include legal dictionaries and encyclopedias as support.

Result and Discussion

1. Legal Position of Housing Consumer

The legal position of housing consumers departs from the provisions in Article 28H paragraph (1) of the UUD NRI 1945 which states that every person has the right to **reside**. This right is also contained in the Housing and Settlement Areas Law which states the right for every person to live in and occupy a house, which can be in the form of ownership or leasehold or non-rental. Each person referred to refers to an individual or legal entity. Thus, consumers who are individuals are legal subjects who have the right to residence based on the legal provisions of this law.

Consumers are every person who uses goods and/or services available in society, whether for individuals, families, other people, or other living creatures and not for transactions. So housing consumers can be defined as parties who use housing goods and/or services for purposes as in the general consumer definition. Consumers in this sector buy housing units from the

[8] Mariam Darus Badrulzaman, *SISTEM HUKUM BENDA NASIONAL* (Jakarta: PT. Alumni, 2022).

party selling the housing units that have been agreed to be traded, followed by the transfer of land rights so that they can use the house in accordance with the agreement. The parties agreeing to bind themselves is the main condition of an agreement, such as PPJB. As one of the subjective requirements for the validity of an agreement, agreeing can contain defects of will if there is error/misdirection, coercion or fraud. What is meant by fraud is if you carry out actions in the form of trickery which causes the opposing party to have an incorrect image of something, thus causing the opposing party to finally accept and be willing to enter into an agreement.[9]

Housing consumers are consumers who are bound by the provisions of housing law with agrarian principles in the form of transfer of land rights. Land rights can be interpreted as rights that give authority to the right holder to use and/or take advantage of the land to which he has rights. The word 'use' is intended for the purpose of constructing buildings, while 'benefit' means not for constructing buildings, for example for agricultural, plantation, livestock or fishery purposes. In the case of PT. ACK itself, the land rights promised in the PPJB are in the form of ownership rights in the name of each consumer which should be separated from the building use rights for Punsae Housing.

Land rights in the case of PT. ACK is in the form of SHGB which must go through splitting and transferring land rights first in order to give birth to SHM. Transfer of land rights is the transfer of control of land that originally belonged to a person or group of people to another person. The transfer of land rights is divided into two ways, namely transfer or redirected. Transfer means that land rights will be transferred automatically by law without going through any specific legal action. An example is land rights that are transferred due to inheritance. Meanwhile, redirected means that land rights can only be transferred to another person if a legal action has been carried out by the parties who agree. Legal acts are all actions of

[9] Urip Santoso, *Perolehan Hak Atas Tanah* (Jakarta: Kencana, 2015).

legal subjects (persons or legal entities) whose consequences are regulated by law, because these consequences are considered to be the will of those who carry out the law.

One form of legal action that can cause the transfer of land rights is buying and selling. This sale and purchase is a legal act that includes two reciprocal acts,[10] including selling and buying. Buying and selling is a form of agreement that creates an obligation or agreement to hand over something. This obligation in buying and selling a house is realized in the form of handing over the goods (house and land) sold by the developer as well as handing over (payment) of money by the buyer to the seller.[11] Although land rights can only be said to have been transferred if they go through AJB and not through PPJB. However, in the context of buying and selling housing itself, PPJB was created as a legal act that creates a legal situation for both consumers and developers which is marked by a change in the status of the parties, namely from consumers to buyers and developers to sellers.[12]

PPJB is a type of engagement which, as the name suggests, is an engagement that originates from an agreement. PPJB is a conditional agreement because it contains conditions that have not been fully fulfilled.[13] PPJB requirements from PT. ACK itself is stated in one of the standard clauses in the sanctions article with suspension conditions which reads as follows: (1) if the buyer is late in paying and/or does not make the payment, then the buyer is declared to be in debt to the seller; (2) if the seller sells land whose status doesn't comply with the provisions, then the seller returns

[10] R. Subekti, *Aneka Perjanjian* (Bandung: PT. Citra Aditya Bakti, 2014).
[11] G. Widjaja and K. Muljadi, *Jual Beli: Seri Hukum Perikatan*, Ed. 1 (Jakarta: Raja Grafindo Persada, 2003).
[12] Govinda Dewantara, Wira Franciska, and Felicitas Sri Marniati, "Kepastian Hukum PPJB dengan Pengembang Atas Tanah yang Menjadi Objek Sengketa Boedel Pailit," *Jurnal Bisnis Mahasiswa* 5, no. 2 (2025): 643-650, https://doi.org/10.60036/jbm.534.
[13] Faisal Muhammad, "Implementation of the Basis of Legal Certainty to the Parties in the BTN Bank Mortgage Agreement with the Binding Sale Purchase Agreement Act (Study at Bank BTN Kediri)," *International Journal of Social Science Research and Review* 7, no. 9 (2024): 280-290, http://dx.doi.org/10.47814/ijssrr.v7i9.2293.

the money he has received; and (3) if the buyer cancels and/or resigns, then the money paid by the buyer to the seller is declared lost. The conditions in paragraph (1) are potential conditions because they depend entirely on one of the parties, namely the buyer who is late in paying or doesn't pay. Meanwhile, paragraph (2) is a mixed condition because it involves the will of the seller in selling the land and is also accompanied by external factors because it relates to the status of the land whether it is in accordance or not in accordance with legal provisions. Meanwhile, paragraph (3) is also a potential requirement because it relates to the buyer's desire to cancel or resign. Apart from requiring conditions so that legal consequences can occur, the three clauses which do not clearly state a time limit mean that the PPJB does not include an agreement with a time limit.

PPJB is a consensual agreement and obligatory agreement.[14] A consensual agreement means that the agreement is based on agreement by the parties. Meanwhile, an obligatory agreement means that it creates an obligation for the parties regarding an object. PPJB of PT. ACK is based on an agreement between consumers and developers which is the first requirement for an agreement to be valid. PPJB in buying and selling houses requires the buyer to make payments (in full or in installments) and requires the seller to hand over the house unit along with the agreed SHM. Therefore, PPJB is also said to be contractual because it has a binding relationship between the seller or developer and the housing buyer or consumer.[15] If one of the parties who agreed to the PPJB is proven to have violated the agreement or committed a default, then there will be legal consequences in accordance with the PPJB clause. However, because the PPJB itself only

[14] Alan Pradigdo Setyo Budi, and Ana Silviana, "Perlindungan Hukum Konsumen Berdasarkan Perjanjian Pengikatan Jual Beli (PPJB) dalam Pembelian Rumah," *Notarius* 18, no. 4 (2025): 1164-1181, https://doi.org/10.14710/nts.v18i4.48810.

[15] Arivan Halim, "Kedudukan Perjanjian Pengikatan Jual Beli (PPJB) yang Dibuat Pengembang Dalam Pre Project Selling," *Justice Voice* 1, no. 2 (2022): 53-69, https://doi.org/10.37893/jv.v1i2.192.

presents the contractual obligations of the parties, it cannot be said that there has been a transfer of rights in it.

As a contractual agreement, PPJB must be based on the principle of good faith. As Y.S. Simamora believes that good faith is part of contractual obligations. His opinion assumes that what is binding is not only what is directly stated by the parties, but also includes what according to the principle of good faith must be done. This confirms that good faith is a form of legal obligation that must be fulfilled in the entire contract process.[16] The term good faith itself is a translation from Dutch, namely 'te goede brow',[17] which according to the KBBI means trust, firm belief, intention, (good) will.[18] As for the Merriam-Webster Dictionary which states the synonym for good faith as 'honesty or lawfulness on purpose' and Black's Law Dictionary which defines good faith as, "Sometimes legally binding due diligence around the effort made, information given, or transaction carried out, honestly, objectively, with no deliberate intent to defraud the other party. However, this does not cover a sin."

Good faith is one of the consumer obligations stated in Article 5 of the UU PK. In letter b, consumers must exercise good faith when carrying out transactions to purchase goods and/or services, including buying and selling housing. Consumers of PT. ACK is a consumer with good faith because it has made all efforts to fulfill the achievements in the PPJB, including good faith in paying off payments for housing units in a timely and appropriate manner. Consumers real efforts to sign the PPJB can also be said to be an indication of good faith because consumers are considered to

[16] Yohanes Sogar Simamora, *Hukum Kontrak: Prinsip-Prinsip Hukum Kontrak Pengadaan Barang dan Jasa Pemerintah di Indonesia* (Surabaya: LaksBang, 2017).
[17] Muhammad Syaifuddin, *Hukum Kontrak: Memahami Kontrak Dalam Perspektif Filsafat, Teori, Dogmatik, dan Praktik Hukum (Seri Pengayaan Hukum Perikatan)* (Bandung: CV. Mandar Maju, 2016).
[18] Tim Penyusun Bahasa, *Kamus Besar Bahasa Indonesia* (Jakarta: Balai Pustaka, 2002).

comply with applicable regulations. Indirectly, on this basis consumers have also fulfilled their obligation to be careful (duty of care).[19]

Good faith in contract law doctrine contains elements of honesty, openness and loyalty.[20] Consumers or buyers who have good intentions have at least several characteristics, namely as follows:

1) Honest and not deceptive

Honest consumers can be judged by fulfilling their duty of care to avoid disputes. Honesty, which is the core value of good faith,[21] will also give rise to the perception that consumers can be trusted. Meanwhile, consumers who do not cheat can be seen from the presence or absence of deception or trickery, whether real or hidden from consumers, as is the definition of fraud which has been explained in the defect of will section in the terms of agreement.

2) Loyal

Loyal consumers will be fully dedicated to the agreement by complying with applicable legal regulations and fulfilling the achievements in the agreed agreement. This level of compliance is also related to fulfilling consumer obligations regarding the achievements that must be carried out as well as respecting the rights of other parties.[22]

3) Transparent and open[23]

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[19] Muhammad Faisal, "Makna Itikad Baik sebagai Landasan Hak Kepemilikan Pembeli: Wujud Standar Tindakan dalam Menentukan Kejujuran Pembeli," *Jurnal Mercatoria* 14, no. 1 (2021): 9-19, https://doi.org/10.31289/mercatoria.v14i1.5079.

[20] Salim HS, *Perkembangan Hukum Kontrak di Indonesia* (Jakarta: Rajawali Pers, 2019).

[21] J.W. Carter, and Wayne Courtney, "GOOD FAITH IN CONTRACTS: IS THERE AN IMPLIED PROMISE TO ACT HONESTLY?" *The Cambridge Law Journal* 75, no. 3 (2016): 608-619, https://doi.org/10.107/S0008197316000507.

[22] Marta Nataya Narwastu Aji, Utari Dwi Apriliani, and Charlie Okniel Siagian, "PENERAPAN ASAS ITIKAD BAIK (GOOD FAITH) DALAM PERJANJIAN JASA TITIP LUAR NEGERI," *ALETHEA: Jurnal Ilmu Hukum* 7, no. 1 (2023): 67-78, https://doi.org/10.24246/alethea.vol7.no1.p67-78.

[23] J. Luzak, A.J. Wulf, M.B.M. Loos, and M. Junuzovic, "ABC of Online Consumer Disclosure Duties: Improving Transparency and Legal Certainty in Europe," *Journal of Consumer Policy* 46, no. n.d. (2023): 307-333, https://doi.org/10.1007/s10603-023-09543-w.

Consumers who are transparent in an agreement will be open in providing information. Open consumers will also not cover up information that is required in an agreement. Therefore, transparency and openness are two things that are related to each other and are important elements in order to avoid default.

Default itself is a condition when a party doesn't fulfill its achievements. Default of PT. ACK against the bank occurred because PT. ACK carried out sales and payment procedures that were not in accordance with the agreed credit agreement. Default of PT. ACK has detrimental legal consequences for consumers. Because there is a civil law doctrine which states that property rights are absolute and can be enforced against all rights including individual rights,[24] the bank which holds property rights (collateral) is a stronger party compared to consumers who only have individual rights. The bank as the holder of the mortgage right has the right to confiscate collateral or auction the collateral for the consumer's housing unit as the object of a mortgage dispute because the developer is in default. This is in line with the provisions in Law no. 4/1996 or the UU HT which states that mortgage rights are a priority right (*droit de preference*) in Article 1 number 1. Then Article 6 of UU HT also gives rights to the bank as the holder of the mortgage rights if the developer as the debtor defaults, namely the right to sell the object of the mortgage rights under its own power through a public auction and to pay off its receivables from the proceeds of the auction. Meanwhile, in Article 7, the mortgage right itself will continue to follow the object, wherever the object is located (*droit de suite*). Apart from material rights, the UU HT also emphasizes Article 20 paragraph (1) regarding the right of execution for holders of mortgage rights to sell objects of mortgage rights. However, the executorial rights based on the UU HT can apparently trigger

[24] Lego Karjoko, Iswantoro, and Makhabbat Ramazanova, "'Good Faith' in Land Transaction: A Comparative Analysis of the USA and Netherlands Law," *Journal of Sustainable Development and Regulatory Issues (JSDERI)* 2, no. 3 (2024): 185-208, https://doi.org/10.53955/jsderi.v2i3.49.

conflicts with other related laws which also regulate the validity of consumer certificate guarantees.

Further provisions related to guaranteeing consumer certificates by developers to banks without the consumer's consent are contained in the KUH Perdata as a general basis that regulates obligations, defaults and Unlawful Actions (PMH). As mentioned in the introduction, good faith is a principle that must exist in the implementation of agreements in accordance with Article 1338 paragraph (3) of the KUH Perdata. Developers who guarantee consumer certificates without the knowledge and consent of consumers are a violation of the principle of good faith because dishonest developers cause consumer ignorance and developers appear to be acting arbitrarily against consumer approval. This is also an indication from PMH because the developer has violated PPJB as a law which should be treated like law, as intended by the principle of *pacta sunt servanda*. Developers are obliged to compensate consumers for losses experienced and consumers can sue the developer. The developer who guarantees the consumer's SHM meets the elements of legal action, the legal uncertainty that occurs to consumers fulfills the element of loss, and the developer who violates this provision fulfills the element of error. Apart from that, developers who default because they violate the PPJB which prohibits pledging consumer certificates are also required to compensate costs, losses and interest.

The next provisions are of course the UU PK, especially Article 4 letter c, Article 7 letter b, Article 8 paragraph (1) letter f, Article 10 letter c, and Article 19. Article 4 of the UU PK contains the consumer's right to obtain legal certainty regarding correct, clear and honest information regarding the condition and guarantee for the housing unit. Article 7 letter b is still related to the same thing, but seen from the perspective of business actors' obligations, which in this case is the developer's obligation to provide legal certainty regarding the condition and guarantee of the actual housing unit to consumers. The next article prohibits business actors from selling goods and/or services, in this case housing units, that do not comply with the promises stated in the advertisement or sales promotion for the housing unit. The next article is regarding the prohibition on business actors from providing offers, promotions or advertisements that are not true regarding the conditions, guarantees, rights or compensation for housing units as objects for sale. Therefore, Article 19 imposes responsibility on the developer to provide compensation for losses, damage or pollution experienced by consumers as a result of using the house sales services at Punsae Housing.

Other special provisions come from Law no. 1 of 2011 which regulates housing. Articles relating to the case of PT. ACK include Article 42 paragraph (2) and Article 134. Letters a and b in the first article emphasize that house marketing can only be carried out if certainty regarding land ownership status and what has been agreed upon has been achieved. If the consumer certificate is guaranteed by the developer, then the element of legal certainty is not fulfilled here. Then there is also a prohibition on carrying out housing construction that does not comply with the agreed specifications, criteria, requirements, facilities, infrastructure and public utilities. This can also be said to have been violated by the developer because in fact Punsae Housing was built on moving land[25] which could endanger the community.

Although PPJB in the case of PT. ACK was signed before Permen PUPR No. 11/PRT/M/2019 concerning the PPJB System applies. However, through these new provisions, there are several related things that need to be considered, especially when it comes to consumer certificates that are guaranteed by developers to banks. The related article is Article 10 paragraph (1). Letters a and b of the article contain provisions that the PPJB at least meets the requirements for certainty regarding the status of land

[25] KompasTV Jateng, "Longsor di Ungaran Ancam Puluhan Rumah Subsidi Roboh," *KOMPAS.TV*, last modified on March 1 2023, https://www.kompas.tv/regional/383318/longsor-di-ungaran-ancam-puluhan-rumah-subsidi-roboh.

ownership and the matters agreed upon. The developer proves certainty regarding the ownership status through the SHGB, but the developer does not provide certainty regarding the SHGB status where mortgage rights have been placed as collateral for the debt to the bank. So in this case the developer is said to have not met the certainty requirements so that a PPJB can be made or if the PPJB has already been signed after the Permen PUPR comes into effect, then it needs to be confirmed again whether the PPJB is valid or not. Certainty regarding the promised achievements has also not been fulfilled because in the PPJB itself, the developer without any concrete action only stated that he would transfer land rights through AJB in front of the local Notary/PPAT (Land Deed Maker Official). A similar thing also happened to the developer's promise in the PPJB which stated that he would split SHGB into SHM, but in fact it was not realized.

Consumers who are willing to sign the PPJB and have good faith in fulfilling PPJB achievements should receive consumer protection from legal certainty. Consumers can actually obtain this legal certainty from the PPJB which applies like law. However, because the sales and purchase PPJB mentions many standard clauses that are detrimental to consumers, consumers in this case are in the same position as being weakened. Several PPJB clauses that weaken consumers include the clause which states that consumers have no right to recalculate the sale and purchase price and are not permitted to file a lawsuit if there is a difference between the land area in the PPJB object and the local BPN (National Land Agency) measurement results. The next clause states that consumers will also not make any claims regarding it. Consumers are actually charged with ensuring the conformity of payments with the agreed time even though consumers in this case have been harmed by the developer both materially and formally. In two of the three sanction clauses, consumers are even at a disadvantage because if the consumer is late in paying, the consumer will be deemed to be in debt and if the consumer cancels the purchase, the money that has been paid will be deemed lost. For this reason, consumers are often considered the weaker party, so they need to be protected by enforcing consumer protection laws,[26] in order to provide legal certainty for consumers.

Legal certainty for housing consumers can actually be obtained if there are formal provisions that recognize the consumer's position as the legal owner of the housing unit they purchased, even though the SHM condition of the house has been guaranteed to the bank by the developer. Provisions relating to certainty of consumer land rights are contained in SEMA No. 4 of 2016 concerning the Implementation of the Formulation of the Results of the 2016 Supreme Court Chamber Plenary Meeting as Guidelines for the Implementation of Duties for the Court. These provisions are contained in the formulation of civil chamber law in the general civil section, precisely in number 7 (seven). This provision states that the transfer of land rights based on PPJB is legally deemed to occur if the buyer has paid the land price in full and has controlled the object of sale and purchase and is done in good faith.

Even though there are provisions that recognize the transfer of land rights through PPJB, there are still other regulations that previously existed. These provisions are Law no. 5 of 1960 or UU PA and PP no. 24 of 1997 concerning Land Registration which is the implementing regulation of the UU PA. The transfer of land rights through the UU PA itself is regulated in Article 26 paragraph (1) which recognizes buying and selling as a way to transfer ownership rights. Meanwhile, PP 24/1997 in Article 37 paragraph (1) regulates that the transfer of land rights and house ownership rights can only be obtained if they have been registered and proven by a deed made by the authorized PPAT in accordance with the provisions of the applicable laws and regulations. The deed in question is an AJB which is authentic and

[26] Nurul Fibrianti, "KONSUMEN INDONESIA: DILINDUNGI DAN MELINDUNGI," *Jurnal Hukum Progresif* 11, no. 1 (2023): 71-81, https://doi.org/10.14710/jhp.11.1.71-81.

is perfect proof that a sale and purchase has occurred in the jurisdiction of the authorized PPAT.[27]

Based on these provisions, there are two differences that regulate the same legal issue, namely regarding the transfer of land rights. These differences cause a clash with legal norms in the form of three legal principles, namely the *lex specialis derogat legi generali* principle, the *lex superior derogat legi inferiori* principle, and the *lex posterior derogat legi priori* principle which applies in Indonesia.[28] The principle in the first order is a principle that prioritizes more specific laws over more general laws. The second principle elevates higher laws above lower laws. Meanwhile, the third principle applies newer laws before older laws. In this case, SEMA 4/2016 cannot be considered a more specific regulation than UU PA and PP 24/1997 because SEMA itself is a provision that is internal to the judiciary or only serves as a guideline for judges and is not a provision that specifically regulates the transfer of land rights through PPJB, let alone being applied generally in the legal field at large. SEMA is also not listed in the hierarchy of norms in accordance with Article 7 paragraph (1) of Law no. 12 of 2011 concerning the Formation of Legislative Regulations, so that SEMA cannot yet be formally ranked in relation to its lower position than the UU PA and the PP which are below it. However, SEMA 4/2016, which came into effect from the year it was promulgated, is a newer provision when compared to the UU PA which originated in 1960 and PP 24/1997 which also came into effect from the date of promulgation.

Drawing from the provisions above, the position of Punsae Housing consumers cannot yet be formally referred to as holders of land rights, which in this case are in the form of property rights transferred from

[27] Olivia Laksmono, and I Made Pria Dharsana, "KEABSAHAN DAN KEPASTIAN HUKUM JUAL BELI TANAH BERDASARKAN AKTA DI BAWAH TANGAN YANG DIBUAT DIHADAPAN KEPALA DESA," *Syntax Literate: Jurnal Ilmiah Indonesia* 8, no. 4 (2023): 2566-2576, http://Dx.Doi.Org/10.36418/Syntax-Literate.v8i4.11661.

[28] Muhammad Reza Maulana, Zainal Abidin, and Mazwar, "The Interpretation of Legal Principles by the Government in the Special Autonomous Region of Aceh," *International Journal of Law and Society* 3, no. 2 (2026): 42-49, https://doi.org/10.62951/ijls.v3i2.885.

building use rights. Consumers cannot yet hold ownership rights because the transaction process with the developer itself is stopped only until the PPJB and payment is paid in full without continuing the procedure for making AJB as promised in the PPJB clause. PPJB itself only contains contractual relationships without transferring rights. Meanwhile, positive law in Indonesia only recognizes the transfer of land rights through a deed made by PPAT in the form of AJB. As long as the developer is still considered to be in default by the mortgage holder, during that time consumers will not be able to get SHM. Considering that the SHM is used by developers as collateral for debts to banks, consumers must take other legal measures to be able to own the SHM.

2. Housing Consumer Legal Protection Efforts

Efforts to protect housing consumers based on their nature are divided into two efforts, namely preventive efforts and repressive efforts. Preventive efforts are prevention efforts carried out before a violation or dispute occurs. The aim itself is to prevent losses for the parties, which in this case is to minimize losses for consumers. Meanwhile, repressive efforts are efforts that can be carried out after a violation or dispute occurs. This second effort aims to restore the rights of the parties, in this case to provide protection to consumers. Preventive efforts include developer regulations and obligations, while repressive efforts include consumers' rights to demand compensation and dispute resolution.[29] This consumer protection effort in Indonesia itself has been regulated through several legal provisions which can then be sequenced through several stages, namely:

1) Pre-Transaction Protection

[29] Eiffel Christovel Keigen Kalensang, "TINJAUAN YURIDIS TENTANG KEWAJIBAN HUKUM DEVELOPER TERHADAP HAK-HAK KONSUMEN PERUMAHAN MENURUT UNDANG-UNDANG NOMOR 8 TAHUN 1999 TENTANG PERLINDUNGAN KONSUMEN," *Lex Crimen* 13, no. 3 (2025): n.d., https://ejournal.unsrat.ac.id/v3/index.php/lexcrimen/article/view/63973.

Efforts to protect consumers before buying and selling occur can be carried out by consumers themselves, namely by paying attention to the provisions related to marketing in accordance with Permen PUPR No. 11/PRT/M/2019 and by complying with Article 5 letters a and b of the UU PK which contains consumer obligations. The Permen PUPR regulates that housing marketing must be able to provide legal certainty, both formal and material, to consumers before consumers buy housing units. So that if there is a promotion by a developer that violates the provisions, then consumers can avoid things that could trigger losses to them and so that consumers are more careful in making buying and selling decisions. The consumer's obligations that need to be carried out are by reading the information, following technical instructions and procedures or how to use the object of sale and purchase as a gesture of preventing undesirable things if they don't do that. Consumers are also obliged to act in good faith when purchasing a sale and purchase object because in this case the consumer acts as a buyer whose performance is to properly hand over money to the seller as a form of contractual relationship that will occur. By fulfilling their obligations, consumers can be considered to have fulfilled the principle of good faith as potential buyers. Fulfilling this obligation is a preventive measure for consumers so that consumers' good faith can be read and recognized by the authorities in the event that a dispute occurs in a judicial institution in the future.

Meanwhile, consumers can carry out repressive efforts before buying and selling by taking full advantage of all consumer rights listed in Article 4 of the UU PK. As parties who will spend a lot of money, consumers who are potential buyers must be careful and brave in voicing their complaints if the developer is proven to have violated consumer rights. For example, consumers can request a re-determination of the land area if it is discovered that there is a difference between the land size in the housing advertisement and the BPN measurement results or the land size that the consumer measured themselves. The consumer's actions can be said to be a repressive effort before the sale and purchase occurs because the violation of rights has been fulfilled by the seller and the consumer's goal is that the seller will be responsible for restoring the consumer's rights before the sale and purchase is actually carried out to continue with the next process.

2) Transaction or Agreement Protection

Preventative efforts by consumers when a buying and selling transaction enters the agreement stage can be carried out by consumers by first fulfilling their obligations in accordance with Article 5 letter c of the UU PK to pay according to the agreed exchange rate. Consumers must also know that Article 18 paragraph (1) of the UU PK prohibits business actors from creating standard clauses that could harm consumers. It is also necessary to pay attention to letter c in this article which relates to handing over money as stated in Permen PUPR No. 11/PRT/M/2019 also regulates it. If there is a clause in the agreement which states that the seller has the right to refuse to hand over the money paid by the buyer for the sale and purchase object, then as a preventive measure the consumer may submit an objection by asking the seller to amend the standard clause in accordance with the permitted provisions. A similar objection can also be raised if the consumer finds a clause that states that the seller is not willing to return the money paid by the consumer in the case of defective goods or in this case the consumer cancels the purchase of the house. This consumer objection effort is one of the preventive efforts so that consumers avoid material losses in the form of money that has already been paid to the seller, for example if the seller defaults at a later date.

Consumers who enter the transaction stage will be faced with the legal consequences contained in the agreement. As a legal consequence of signing the agreement, such as PPJB, both the seller and the buyer will enter into a conditional agreement. Even though the PPJB does not yet contain the transfer of land rights, the PPJB is a legal product that applies like law and is recognized based on the UU PA and PP 24/1997. As a repressive effort, consumers in this case can use the legal basis in Articles 1239, 1243, and Article 1267 of the KUH Perdata, Articles 4, 7, 8, 18, 19, and 45 of the UU PK, Articles 129 and 148 of the Housing Law, as well as Articles 4, 7 and 9-13 of Permen PUPR No. 11/PRT/M/2019. With the majority of provisions giving consumers the right to apply for compensation, the repressive effort that consumers can take to restore their rights is by filing a lawsuit based on the seller's default on the agreement, which in this case is in the form of PPJB.

3) Post-Transaction Protection

Consumers can take preventive protection efforts after the transaction is paid in full and the agreement is signed by securing related documents and evidence such as original PPJB, payment receipts, proof of transfer, even brochures or advertisements as specific supporting evidence. In this case, consumers should also ask for a statement in full from the developer and ask for a handover schedule so that they can at least get certainty for the next procedure. Because in this case consumers have not yet received AJB, consumers must urge developers to immediately process AJB so that SHM can be made. Consumers must also always ensure that the SHM has been separated from the master certificate and does not contain any security rights or disputes in it.

Repressive measures that consumers can take if the developer still does not respond to consumer demands are through a summons or legal warning letter. A subpoena is a repressive measure because it includes non-litigation legal remedies before a lawsuit is made if there is a violation by a business actor.[30] If the subpoena is unsuccessful, consumers can continue their complaint to BPSK (Consumer Dispute Resolution Agency) or through litigation through a lawsuit in court as regulated in Article 45 paragraph (1)

[30] Yudha Andrianto, and Dwi Sisbiantoro, "UPAYA HUKUM TERHADAP KONSUMEN PERUMAHAN ATAS WANPRESTASI YANG DILAKUKAN OLEH DEVELOPER (PT. ANUGERAH AGUNG PRATAMA)," *KLAUSULA (Jurnal Hukum Tata Negara, Hukum Administrasi, Pidana Dan Perdata)* 1, no. 1 (2022): 75-83, https://doi.org/10.32503/klausula.v1i1.2366.

of the UU PK. Meanwhile, Law 30/1999 or the Arbitration and Alternative Dispute Resolution (AAPS) Law regulates non-litigation efforts including consultation, negotiation, mediation, conciliation and expert assessment. Non-litigation efforts are an alternative step in resolving disputes, so they can also be called secondary repressive efforts.[31] One type of non-litigation effort in the case of PT. ACK itself is a negotiation effort that results in an agreement that consumers can have SHM if consumers are willing to redeem it according to the agreed nominal amount. The SHM redemption procedure is not yet explicitly regulated in Indonesian law, but is contained in Article 1381 of the KUH Perdata which states that an agreement can be terminated due to payment. Meanwhile, consumers can take the litigation route to the judiciary by filing a civil lawsuit at the District Court (PN) for first instance cases or at the High Court (PT) for appeal cases.

4) Surveillance Protection

Consumers can carry out preventive monitoring efforts by checking the developer's legality, which includes development permits, land status, IMB (Building Construction Permit) or PBG (Building Approval), and project permits. This effort also includes consumer supervision of PPJB clauses, especially regarding clauses that are detrimental to consumers and the need to ensure the transfer of developer responsibility. Consumers must also monitor payments so that they comply with procedures based on legal provisions and there is no fraud or mark-up.

Repressive consumer monitoring efforts can be carried out when indications of violations by developers are found, namely by means of consumer complaints, project investigations, and legal pressure. Consumers can make complaints to BPSK, the housing service, as well as the Non-Governmental Consumer Protection Agency (LPKSM). Consumers

[31] Febriandi Chandra, and Yunimar V, "Penyelesaian Sengketa oleh Badan Penyelesaian Sengketa Konsumen (Bpsk) Kota Padang antara Konsumen dengan PT PLN (Persero) Unit Induk Wilayah Sumatera Barat secara Arbitrase," *Jurnal Indonesia Sosial Sains* 3, no. 1 (2022): 78-88, https://doi.org/10.36418/jiss.v3i1.513.

can carry out project investigations/audits by ascertaining whether the project is stalled, whether the certificate is guaranteed to the bank, or whether there are signs of default by the developer. Meanwhile, consumers can exert legal pressure through subpoenas, class action lawsuits in accordance with the UU PK, or criminal reports if there are elements of fraud.

5) Protection of Consumer Property Rights

Property rights are rights attached directly to objects (including land) which are absolute (*erga omnes*) and always follow the object wherever the object is located. Property rights can be caused by the transfer of land rights from an old legal subject to a new legal subject. Property rights do not immediately transfer just because there is an agreement such as PPJB. PPJB itself only creates individual rights (*obligator*), while the transfer of rights must go through the AJB made by PPAT before being registered with the land office which will issue SHM as a sign that material rights have been officially transferred. Property rights belong to consumers of PT. ACK has not been completely transferred because the consumer does not yet hold SHM and only has expectative ownership rights and factual control rights.

Consumers of PT. ACK is a consumer who meets the factual mastery theory. This theory allows consumers to be able to control the housing unit that has been purchased and is considered to be their property, even though the consumer is not yet the legal holder of property rights. This consumer control can be seen from the use of housing units under consumer control and the use of the house as a residence. By fulfilling this theory, consumers' material expectative rights will increase. With this increase in expectant rights, the assumption will emerge that the consumer is the party who truly has the right to the housing unit. Therefore, expectant ownership rights are an important thing to pay attention to because even though the certificate is a strong piece of evidence, it can still be tested by facts of control in the field[32] and can also be taken into consideration in a dispute.

Expectant ownership rights are often mentioned in a case if there is a dispute in SHM. SHM is a sign of ownership of material rights which can become the object of dispute in court if there is legal uncertainty in it. Likewise with SHM consumers of PT. ACKs should be given properly by developers to consumers instead of being used as collateral and burdened with mortgage rights. The developer's actions can be an indication of problems with land procedures, resulting in unclear history of the transfer of land rights and resulting in legal uncertainty, especially for consumers. This legal uncertainty is something that also needs to be found out about the provisions in order to create legal certainty in order to realize housing consumer protection.

Expectant ownership rights are ownership rights that are not yet perfect, but already provide a valid legal expectation to become the owner in the future after certain conditions are met. The conditions or elements themselves are more or less as contained in SEMA 4/2016 which recognizes that the transfer of land rights can occur if: (1) through PPJB; (2) the buyer has paid the land price in full; (3) has mastered the object of sale and purchase; and (4) carried out in good faith. Consumer PT. ACK has fulfilled the first element because buying and selling is done through PPJB. Consumer PT. ACK has also fulfilled the second element because it has paid the price of the house in full, even though it was paid in installments. Consumers who have controlled or occupied a house have also fulfilled the third element. Meanwhile, the fourth element has also been fulfilled by consumers who have good faith in carrying out transactions & agreements.

However, the provisions of SEMA 4/2016 cannot immediately be used for cases of transfer of land rights because SEMA itself does not include the

[32] Faisal Indra Fadilla, and Sri Wahyu Handayani, "Pendaftaran Peralihan Hak Atas Tanah berdasarkan Akta Kuasa Jual dan Penguasaan Fisik Bidang Tanah," *Al-Zayn Jurnal Ilmu Sosial & Hukum* 3, no. 5 (2025): 6666-6676, https://doi.org/10.61104/alz.v3i5.2305.

7 (seven) hierarchy of norms according to Law 12/2011. SEMA, which is more accurately categorized as a policy regulation (*beleidsregel*), from this form of formal function, only applies specifically to judges under the authority of the MA. As a regulation, SEMA 4/2016 may not be applied outside the area of the Supreme Court because this would violate the principle of *lex superior derogat legi inferiori* and is feared to cause confusion for the parties involved.[33] So in this case the protection of consumer material rights must be based on general and special provisions which were created to regulate them.

Protection of consumer property rights is based on the UU PK, Housing Law, and Permen PUPR No. 11/PRT/M/2019 which provides protection to consumers for material rights that arise as a result of buying and selling transactions in PPJB. These material rights include land rights, building rights and unit ownership rights which are part of the ownership system,[34] which in Indonesian law is better known as property rights as the highest rights of an Indonesian citizen. However, because in the case of PT. ACK itself, the developer, involves the bank as the holder of mortgage rights and is a preferred creditor, so there is a conflict between the bank's property rights in the UU HT and consumer rights in the UU PK. The position of mortgage rights with banks is juridically stronger than obligatory rights with consumers because mortgage rights are the rights that first bind the developer and the bank in a registered debt credit agreement, so its implementation takes priority. In this way, consumer property rights protection for housing units and land can only be obtained if the mortgage holder is willing to hand over the consumer's SHM which the developer has used as collateral. In the case of PT. ACK itself, Punsae Housing consumers

[33] Hendra Catur Putra, "Kedudukan SEMA Dalam Sistem Hierarki Perundang-Undangan Di Indonesia," *ELQONUN: Jurnal Hukum Ketatanegaraan* 1, no. 2 (2023): 130-143, https://doi.org/10.19109.

[34] Zaki Achmad Syamsuddin, and Salsabila Shafa Khairunnisa, "Between Permit and TItle: Legal Reconstruction of Apartment Ownership and Licensing System," *Indonesian Journal of Agrarian Law* 1, no. 2 (2024): 139-156, https://doi.org/10.15294/jal.vli2.31083.

ultimately pay a nominal amount to the bank holding the mortgage rights in order to obtain SHM as legal and formal proof of material rights.

Conclusion

Housing consumers are users of housing services and/or goods protected by the UU PK as well as parties bound by the transfer of land rights in accordance with the provisions of agrarian law. Consumers in the case of PT. ACK is a consumer with good faith because it has fulfilled obligations and payments in accordance with Article 5 of the UU PK and has consumer rights in accordance with Article 4 of the UU PK, one of which is to use goods and/or services provided by consumers of PT. ACK is realized by controlling and occupying a housing unit. Another right that is no less important is the consumer's right to obtain legal certainty regarding the consumer's legal position as the legal owner of the housing unit they have purchased. The legal position of consumers of PT. ACK can be withdrawn back to the transaction process which has still reached PPJB and has not yet reached AJB to be able to make SHM due to the developer's default to the bank. Because PPJB only contains contractual relationships without transfer of land rights, PPJB cannot be said to be a sign of legal ownership. Therefore, consumers of PT. ACK also cannot be officially called the legal owner of the housing unit because PT. ACK is also not yet the SHM holder as the strongest sign of ownership of an object in the form of land and the house on it.

Although consumers of PT. ACK cannot yet obtain certainty regarding its legal status as the legal owner of a housing unit, but consumers can still implement preventive and repressive measures to obtain consumer protection. Consumers can make these efforts before the transaction occurs, when the transaction or agreement occurs, or after the transaction occurs. Efforts such as through subpoenas, negotiations, complaints to authorized institutions, lawsuits for compensation for developer defaults to judicial institutions, as well as through monitoring efforts or by referring to consumer property rights over the object of the agreement in the form of a house unit and its land. Property rights belong to consumers of PT. ACK itself has not been completely transferred because with the transaction being stopped at PPJB, the consumer only fulfills the expected ownership rights and does not yet hold absolute ownership rights in the form of material rights which in this case are owned by the bank as the holder of mortgage rights. Because consumers of PT. ACK has also occupied the housing unit purchased with payment in full, so the consumer can be said to have fulfilled the theory of factual possession. So, even though consumers do not yet have certainty as the legal owners of housing units, consumers through legal protection efforts are parties who have expectative rights and fulfill the theory of factual control which will later play a role if a dispute occurs.

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