

## **REAL ESTATE BUYING OFF PLANS - WHAT TO LOOK FOR?**

Buying off plans can lead one into traps that are not readily evident at the time. Here are some of the matters would-be buyers need to consider:

### **1. Who is the owner/developer ("vendor")...**

These days the vendor will often form a single-purpose company for a particular development. While the vendor will be able to satisfy its financiers by offering personal and/or other security, a purchaser is often left with a virtual shell company to sue for breach of warranties or undertakings.

When purchasing off plans, one needs to ensure that the developers, builders and designers are organisations of substance. Otherwise, there may be no authorities to be sued when things go wrong.

Some vendors require the deposit to be held by them. It is important to ensure that the deposit is held by a stake holder or solicitor for the vendor pending the contract becoming unconditional.

### **2. When does the purchaser have to complete the purchase?**

Ideally, the purchaser should not have to complete until the later of the issue of the title, certificate of practical completion, and code compliance certificate. Often the purchaser is asked to complete on the later of the issue of title or certificate of practical completion. Normally, the certificate of practical completion is issued by the vendor's architect or engineer and is clearly not as impartial as a code compliance certificate, which is issued by the local authority and confirms that the building has been erected in accordance with the plans and specifications.

Sometimes a vendor of the block of units will offer to settle on the issue of a partial code compliance certificate, as it relates to this specific unit or apartment being purchased. While this is better than nothing at all, the purchaser is likely to have an obligation for a share of outgoings relating to the common facilities based on the purchaser's unit entitlement. Also, it is clearly in the purchaser's interest to ensure that the whole building receives a code compliance certificate. This is a matter that needs to be understood as it is unlikely that a code compliance certificate for the whole building will be available until every unit and communal facilities are complete.

### **3. What recourse does a purchaser have against whom if the building is found to be defective?**

As pointed out, the vendor may be a shell entity and in the event of default, there is every likelihood that proceedings brought against it would yield little or no return. Buyers need to carefully check the vendor's track record, where any deposits are to be held, who can have access to it, and how.

Purchasers need also to be aware of the extent to which a vendor guarantees major and minor defects arising from faulty workmanship or materials. Vendors generally offer between 30 and 90 days for notification of maintenance matters. A 90 day period should be given. What is offered may tell buyers something about the integrity of the vendor. Purchasers should also consider what the vendor is offering in respect of the structural integrity of what is being purchased, and what material or chattel guarantees will be available on settlement, e.g. roofing materials, stove.

### **4. Does the agreement contain a "sunset" clause?, i.e. the purchaser's ability to withdraw from the deal if the building is not completed by a certain date.**

Most agreements give the vendor the ability to pull the plug, but allow no way out for the purchaser. Agreements for the sale of units or apartments in a large block usually provide that the vendor is not obliged to complete until it has sold a certain percentage of the units on offer. It is important to understand that the delays which could occur could end up hitting the purchaser severely in the pocket if there is no ability to withdraw.

**5. Does what the purchaser is told he is getting match up with the plans and specifications?**

Many contracts allow the vendor to alter plans and specifications to satisfy local body requirements and to take account of the availability of materials. It is important the purchasers satisfy themselves that the final product cannot be reduced below a certain size or that there will be no reduction in value of the apartment as a result of a reduction in size. It is important to check carefully for escape clauses to alter the design and to always define the tolerance level of change before any contract price adjustment becomes effective.

Purchasers should make sure that they understand just how big the building or apartment they are buying is, as well as the individual room sizes. The scale to which plans are drawn need to be checked, considered and understood. Furthermore, the contract can often provide for a garage or carpark, but it is not clearly understood how large the accessory unit is. Will it house the purchaser's existing vehicle?

If a unit title is on offer, the purchaser should obtain copies of the proposed Body Corporate rules for the building and look for the vendor's ability to change those rules without reference to purchasers. The purchaser should also check carefully what the rules say about the keeping of animals.

If a Body Corporate secretary is to be appointed, who is it to be and how good is their track record.

**6. What is the likelihood of the redevelopment of an adjacent property blocking out a valued view?**

The purchaser should consider visiting the local authority administering the building codes and the town planner. Plans will show particular restrictions regarding building heights and densities applying to the area where the unit in question is situated. Are there any "change of views" or zone changes contemplated.

The above are some of the critical matters that need to be considered when purchasing off plans. It is essential that you get a lawyer to read the contract and point out the risks. Matters as remote as understanding capital growth and rental income projections of salesman that have been calculated and what other similar units or apartments have sold for, may be essential considerations in a particular case.

Any of our property partners [Bill Duncan](#), [David Selkirk](#) and [Tony Fortune](#) will be happy to advise purchasers of property generally, and particularly those who intend purchasing off plans.