

Ins and Outs of Buying Off-Plan

Although the property market is still attempting to claw its way out of turbulent times, by all accounts we're on the road to recovery – and that means new developments that suffered horribly over the last two years are likely to begin re-emerging once again.

At this stage a second-hand property still represents far better value for most buyers than a brand new home, but there's no denying the allure of building your own brand-new house. For most consumers, that will mean purchasing in a new development – and in many cases, buying off-plan.

Clearly there's a wide range of things to consider when making a purchasing decision in a new development, not the least of which is to visit the development site and orientate yourself before carefully choosing a position for your unit.

Ideally a show unit will give you an idea of the style, size and layout of your new house, but it's vital to check that the finishes you see are standard, and are not extras over-and-above the purchase price.

If there is no show house or completed units, carefully evaluate and examine the developer's plans, and compare the size and layout of the rooms in your current home to determine if it will suit your requirements.

Undoubtedly one of the most important things to do is check who the developer and builders are, and find out what other similar projects they have completed. The sales agent should have a brochure with all the relevant information available in this regard. Additionally, your bank or bond originator will be able to confirm if they have a clean track record or not.

Once you decide to go ahead with the deal, you will be obliged to sign an offer to purchase. Make sure that all of the relevant documents are included in the contract, and are signed by the purchaser and the developer. This includes the site layout showing the position of your unit; floor layout of the unit purchased; a schedule of fittings and finishes; allowances for items such as carpets, tiles and lights; and body corporate rules and levies.

Important contract clauses

Various important clauses must also be included in the contract, such as the occupation date. The developers will have a clause allowing them to move this date by a reasonable amount of time, which gives them a measure of protection against uncontrollable factors such as bad weather.

Most developers utilise development bonds, so check if the contract is subject to development finance. The occupation date could also move if the start of construction is subject to a defined amount of pre-sales.

To protect yourself, you could negotiate a cut-off date, allowing you to withdraw from the purchase if the unit is not started or completed by a specified date.

Make sure the contract states who is responsible for the transfer fees. Furthermore, if you have requested extra work, extensions or additions for your unit, ensure that you receive a quote and sign acceptance of this prior to any work commencing.

Once an occupation date has been finalised (the developer should give the purchaser notification 30 days prior to this date) and when the unit is complete, the developer will arrange a handover date.

This allows the buyers to inspect the unit and make sure they are happy with the construction, the finishes they chose and that what was agreed to in the off-plan contract is indeed what was built.

If the purchaser is justifiably unhappy with certain issues, the developer is required to rectify these prior to occupation. However, if there's a disagreement that cannot be resolved, the contract should make provision for an arbitrator.

All developers and builders are legally required to be registered with the National Home Builders Registration Council (NHBRC), and you can confirm their listing on the council's website (www.nhbrc.org). Conveyancers cannot transfer a unit without a NHBRC certificate being issued for the property, thus ensuring it meets the required building standards.

The NHBRC will only step in if the developer has gone insolvent, or if there are major structural defects with the building.

Obtaining a bond

The bond application process is the same as buying an existing house. The banks will still do a credit check and determine affordability based on your personal income and expenses. However, they will value the house to be built using the current building costs (R/sqm) as well as the location of the development.

Deposits are not commonly required up front from the buyer, as the developer is not entitled to use these funds for developing a sectional title development. However, some developers insist on a deposit to prevent purchasers from withdrawing from a signed contract.

The normal clause will state that the developer can retain the deposit as damages should the purchaser breach the contract.

Dealing with an insolvent developer

Dealing with a developer that has gone insolvent is a rather complicated process, thus the importance of determining their status within the industry and amongst the banks before signing an offer to purchase.

If it is a sectional title development and the developer goes insolvent prior to the property being registered in the purchaser's name, the liquidator can decide whether to cancel or enforce the contract.

In the case of it being cancelled, the purchaser could have a damages claim against the insolvent estate, but this would normally reap little benefit as the banks would have first claim against any assets.