

Dear Sir/Madam

I would like to make the following submissions in relation to restrictions that should be placed on Special Conditions in Contracts for Sale for Off the Plan Lots for Residential property.

1. Land Tax Adjustments

A vendor should be precluded from requiring an adjustment for Land Tax for Off the Plan Lots. Far too many vendors are obtaining a windfall by including exorbitant Deemed Land Tax Amounts in their contract Special Conditions.

2. Council Rates Adjustments

Almost all contracts require that the purchaser allows the vendor an amount based on deemed rates for Council Rates. The practice of Councils is to backdate rates from the date of Registration once the Lot is separately rated. With the current procedure, purchasers allow the vendor an amount based on deemed rates from the date of settlement to the end of the rating period. Once the property is separately rated (usually about three months after registration), the new owner is sent a Council rates notice for the period from registration to the end of the rating period. Having already allowed the vendor a substantial amount for rates to the end of the rating period, purchasers are required to send the initial Council Rates notice to their solicitor who then forwards to the vendors solicitor who then forwards to the vendor for payment. On many occasions, purchaser simply pay the rates notice without remembering that they have made an allowance. For those that do remember to forward the notice to their solicitor, getting a vendor to pay the rates after completion can be extremely time consuming and challenging at best. Quite often, vendors simply ignore the obligation to pay the rates in the hope the problem will simply go away. Further, vendors are using the Council Rates Deemed amounts clause to overinflate the expected rates amount and obtain a financial benefit at the expense of the purchaser. It is becoming a regular occurrence for developers to liquidate or wind up the Development Company responsible for a development shortly after settling all the sales. In those circumstances, the purchaser who has allowed an amount for Council Rates is also required to pay the actual rates.

The solution to this issue is that there should be legislation that prohibits a purchaser allowance for Council Rates. Vendors should be required to allow the purchaser an amount based on deemed rates from the date of registration to the date of completion. This would mean that the purchaser simply pays the Council Rates Notice when received knowing that they are liable from the date of registration (having already received a vendor allowance) to the end of the rating period.

3. Water Rates Adjustments

Vendors should be precluded from requesting a Water Rates Adjustment for any Off the Plan Lots. Again, vendors are using the adjustment process to obtain a windfall at the purchasers expense. The amounts being so minimal that a purchaser inevitably pays the vendor allowance for this adjustment on settlement and then pays the Water Authority for the rates when issued.

4. Pro Rata Price Adjustment for Reduced Area

A vendor should be required to adjust for the price based on a Pro Rata Price Reduction for any reduced area based on the per square metre rate calculated from the Draft Plan of Subdivision or Draft Strata Plan and the eventual size of the Registered Lot. Most contracts

allow for a minor variation of a 5% reduction in the Lot Size before a purchaser can rescind the contract. My proposal does not impinge on this right as the right to rescind is quite separate from the price adjustment right. Further, any drafting of a Statutory Clause should take care in ensuring that there is no requirement for a price increase if a Lot Area has increased from Draft Plan to registered Plan.

5. Amendments to Draft Plans and Section 88B Instruments

Any notice advising of an amendment to a Draft Plan and/or Section 88B Instrument must include a description of what changes have occurred. Further, most contracts provide that the purchaser must exercise any right to rescind within 7 days of receipt of such notice. This period should be a minimum of 14 days.

6. Release of Deposit Clauses

The release of any part of the deposit in an Off the Plan Contract should be strictly prohibited. Parties should be forced to have the deposit invested and all interest should be rightfully paid to the purchaser.

7. Notification of Registration and other matters

Vendors solicitors should be precluded from serving notification of Registration or other matters that need action within 7 or 14 days (actionable days) on a date where the actionable days fall within the last 14 days of the year and the first 14 days of the following year. Currently, large city firms (who have skeleton Paralegal Staff are serving notices on or close to the day on which most small suburban firms are closing for the Christmas break. It seems that there is a rush to registration and notification without any consideration of the consequences for the purchaser.

8. Settlement Period

A vendor should be required to provide a minimum of 21 days period for completion for any Off the Plan contract. The standard period provided is 14 days. The problem is that most lenders cannot complete the necessary documentation in the 14 day period. Purchasers are quite regularly paying interest for late completion at exorbitant rates.

9. Sale of Lots prior to Development Consent

No developer should be allowed to market a property for sale until such time as Development Approval has been obtained. There are far too many variables that can affect a purchaser in contracts that are subject to Development Approval.

10. Special Conditions Allowing a vendor to Assign its Interest

A vendor which sells his interest in a Development to a third party should be required to compensate the purchaser a Statutory Amount for legal fees incurred as a result of the Assignment. This amount should vary based on whether or not the purchaser has attended to stamping of the Transfer.

I trust the above recommendations will be considered in the review.

Kind Regards,
Aydin Acar
Solicitor