

hello

I am a registered surveyor and been in the development industry since 1970. i have my own surveying practice and am currently involved in land development.

I have no issues in relation to off the plan contracts for apartments although there are considerable issue in the consumer getting what he/she thinks they are buying. This method appears to be a finance mechanism to finance developments. It is predominantly for the developers benefit. The buyer generally is unable to exit from the contract except if changes are more than significant. The current government has only seen the positive side for buyers in a rising value property market. if you go back to the 1980 and 1990's you will see a falling market and this is when consumers will suffer.

**I TOTALLY disagree** with the use of off the plan contracts for land except if development consent has been issued for the following reasons:

1. In the absence of a development consent there is no guarantee that the development will be approved as submitted. By this I mean that Councils can reduce the size and or shape of the development by eliminating allotments that affect environmentally sensitive land, geotechnical unsuitable land, Asset Protection Zone, riparian corridors;
2. For Integrated development proposals other Government bodies are involved in the DA process:-
  - a. The RFS can refuse a development or require it to reduce allotments due to the Bushfire issues;
  - b. The Office of Water can refuse the development due to Water Management Act requirements;
  - c. The crown Lands office can refuse construction of one of their roads unless transferred to the local Council adding a large time delay;
  - d. The EPA could refuse the development due to contamination issues or proximity to a hazardous or noxious industry;
3. The final topography of the allotments can change as a result of engineering aspects during construction;
4. The shape and size of the allotments may change due to the requirement to provide padmount substation sites, sewer pumping stations, public utility requirements;
5. Councils may impose conditions of consent that make the development totally unviable;
6. It will lead to more developments being referred to the Land and Environment Court in order to get a more timely approval of the development as Local Governmnet is notoriously bad in assessing DA in a timely manner. This is a significant cost for rate payers in funding Council's appearance in the LECourt;
7. Some off the plan contracts have long time periods of up to four (4) years

I have been involved in a number of pre-sale contracts and both have ended in significant costly litigation. The major beneficiary for this type of contract is the developer. They are the ones who use the locked in contracts as a means of gaining finance to developments that they don't even own yet.

The general use of Put and Call agreements in purchases of en globo land in conjunction with Off the plan contracts with buyers means that under funded developers can enter the development industry with very little funding. The Put and Call agreements lock in the current land owner with virtually no means of exit, and then the same developer enters Off the plan contracts with buyers.

The Minister's introduction is that the development industry needs this option and the large number of off the plan contracts (10% of contracts) indicates that it is needed. I take the alternate view from actual long term experience. That is "no off the sale contracts".

If the government is stupid enough to proceed with the ability of off the plan sales for land I consider as a minimum that:

7. The development has development consent;

8. The developer is the property title owner;

9. The Contract has exit clauses for the buyer that relate to the variation of personal conditions. That is if the buyer has a change in employment conditions or employer, loss of employment, moving to a different area, divorce or separation, death of family member, inability to work, contracting a debilitating illness etc.

10. The contract must acknowledge that the contract is the means of the developer obtaining finance for the development and agrees to pay interest on any head deposit at the 90 bank bill rates after the passage of the normal 60 day settlement period.

regards Darryl Warry

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