Discovery of Defects or Missing Items After Purchasing a Unit

Owners often find themselves in the position where they purchase a unit off the plan, only to discover that there are items missing or there are defects present (i.e. cracking to the cupboards).

Where this happens, owners may require that missing items be installed, or request rectification or payment in lieu. Owners may be able to recover for the defects from a range of parties, including builders, subcontractors, developers and home warranty insurers. If owners are inclined to consider taking action, it should be kept in mind:

- Sale contracts may specify certain time periods but they cannot exclude statutory warranties. There are three statutory warranty periods which may potentially apply to residential buildings in NSW depending on the date the construction contract was entered into:
  - 2 years from completion (plus 6 months where a defect becomes apparent during the last 6 months of the warranty period); or
  - 6 years from completion (plus 6 months where a defect becomes apparent during the last 6 months of the warranty period); or
  - 7 years from completion.

- Where work is incomplete, there are strict time limitation periods within which owners can take legal action so it is important to seek legal advice immediately upon becoming aware of the defects. For instance owners only have 12 months in which to notify their home warranty insurer for incomplete work (after the contractor has stopped work).

- Owners can also make a complaint to Fair Trading where the builder is licensed and has failed to carry out work in accordance with the building contract. However owners should be careful to only make a complaint with respect to items for which the builder is responsible. For instance developers often engage contractors other than the builder to install whitegoods.

- Where multiple lot owners are experiencing similar defects to lot property, it may be possible for these lot owners to commence proceedings against any or all of the above parties jointly. It will be necessary to distinguish between lot and common property defects – where defects are common property, the owners corporation will be responsible for repair of these defects.

- The building defects bond scheme will apply to contracts for residential building work entered into on or after 1 July 2017 where there is no home warranty insurance. Once this scheme commences, owners corporations will have to take into consideration the impact of the bond scheme on recovery against the developer for building defects.

This is a complex area of law and we are able to provide assistance to owners in identifying who they can recover from (e.g. home warranty insurers and certifiers) and taking steps to protect their rights within the applicable time limits.

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Key takeaways

- Owners may recover for defects from builders, subcontractors, developers, and insurers.
- There are strict time limits for notifying insurers about incomplete work.
- Owners corporations are responsible for common property defects.
- The building defects bond scheme applies to contracts for residential work entered into after 1 July 2017.
- Legal advice should be sought immediately upon discovering defects.

****The information contained in this article is general information only and not legal advice. The currency, accuracy and completeness of this article (and its contents) should be checked by obtaining independent legal advice before you take any action or otherwise rely upon its contents in any way.*

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