"Off the Plan" Purchase Regrets – Top 5 Potential Solutions

Sale of strata apartments "off the plan", i.e. before they are built, are common with new developments. In a rising market, purchasers are keen not to miss out or to lock in a price which they expect to be less than the value of the apartment when completed.

Why might purchasers regret their off-the-plan purchases?

- are now faced with a weaker property market, undermining the expected benefits of their purchase.
- may be locked in for long periods of time, possibly after they become liable to pay stamp duty, with no certainty that the building will actually be completed.
- may be faced with changes which adversely affect their apartment, but about which they have no legal rights or no rights which they can practically enforce.

There may well be a solution and it is well worthwhile for purchasers in this situation to obtain legal advice about their options. For example:

- The vendor or its agent or other representatives may have made misrepresentations or engaged in misleading conduct, in relation to which the purchaser has rights.
- Although "off the plan" contracts typically limit purchasers' rights, even a pro vendor contract will require a vendor to disclose and do many things and a vendor may have overlooked one or more of these, possibly giving the purchaser rescission or other rights.
- Conveyancing legislation gives purchasers various statutory rights which the contract generally cannot override. In particular:
    - a vendor is required to attach a number of prescribed documents to a draft contract before it is executed by the purchaser, failing which the purchaser may have a right of rescission.
    - the legislation imposes a number of implied warranties in the sale contract, generally that a number of specified adverse matters do not apply to the apartment. A vendor must disclose any such matters, if applicable, as a purchaser may otherwise have a right of rescission.
    - make available to prospective purchasers, prior to marketing the apartment for sale, a disclosure statement containing a copy of the draft strata plan prepared by a registered surveyor, draft by-laws and any additional information required by the regulations. Failure to comply will be an offence.
    - Include the disclosure statement in the contract. The regulations specify that a purchaser will have a right of rescission if the information provided is incorrect

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- Notify the purchaser if the supplied disclosure statement was or has become inaccurate within 21 days from completion of the contract. If a vendor or developer fails to advise the purchaser of any material changes to their property, the purchaser will have a right of rescission of contract, and be entitled to recover their deposit from the vendor.

- Give the purchaser a copy of the registered plan and any other document registered with the plan, e.g. by-laws, easements & covenants. The purchaser is not required to settle until 21 days after this is done and may have a right of rescission if an inaccuracy in the supplied disclosure statement is identified.

- Home building legislation also requires a developer, in most cases, to attach to the contract a certificate evidencing home building compensation insurance, failing which the purchaser will have a right of rescission. Where the relevant work has not commenced, it is sufficient to include in the contract a provision disclosing specified matters and giving the purchaser a right of rescission if the certificate is not provided within 14 days of the insurance being effected. Either way, if the certificate is overlooked, the purchaser may be able to rescind the contract.

We have considerable experience in this area and can help purchasers who require assistance with these issues.

Key takeaways

- Purchasers may regret off-the-plan purchases due to a declining property market.
- Legal advice can help purchasers understand their rights regarding misrepresentations and misleading conduct.
- Conveyancing legislation provides statutory rights that cannot be overridden by contracts.
- Vendors must provide accurate disclosure statements to avoid rescission rights for purchasers.
- Home building legislation requires specific documentation to be attached to contracts, affecting purchasers' rights.

****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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