

Sales of builder-tied plots in Guernsey

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Sales of builder-tied plots have long been a feature of the Guernsey housing market. They are typically sold to a buyer early on in the development either as an empty plot or with a partly completed house on it, and at the same time the buyer enters into a building agreement with the seller-developer for the completion of the works.

This saves document duty for the buyer and the seller-developer receives funds at a much earlier stage.

This differs from the approach taken in some other jurisdictions where a developer and buyer sign conditions of sale at an early stage in the development but completion of the sale only takes place after completion of the works.

The type of building agreement used here contains a fairly standard set of obligations that have become accepted over time. Despite this, there are potential pitfalls in entering into such an arrangement which buyers and developers need to be aware of to avoid unnecessary delays and costs.

Issues include:

Purchase price

Because the sale usually completes before practical completion of the works, the purchase price is paid in instalments. A portion of the price would be payable on completion of the sale and the balance in instalments at different stages of the construction.

It is important that the instalment prices represent the true value of the building at the relevant stage.

Defects liability period

A buyer would expect that any defects that appear in the building after practical completion are

rectified by the developer at its own expense. Only defects reported during a limited period of time are rectified under this provision. This is called a defects liability or snagging period which usually the parties agree to last 12 months.

We have seen provisions in some agreements that attempt to limit the scope of developers' warranties to the duration of the defects liability period. This would prevent a buyer from making a claim outside the defects liability period. Limiting the scope of the warranty in this way would usually be resisted by buyers and their lenders.

We occasionally also see provisions under which seller-developers are not responsible for making good certain types of defects. This would also usually be resisted by buyers and their lenders.

Defects insurance

It is becoming more common for seller-developers to provide insurance against defects in the works. This insurance normally applies to major defects only (eg structural defects and defects in the tanking or waterproofing). The advantage of insurance is that this guards against the risk of seller-developers becoming insolvent and being unable to rectify major defects.

Insurance does not usually cover more minor defects.

Drawings

A building agreement should include a full set of drawings detailing the works. This will give certainty as to what the developer agreed to do and the buyer is paying for, and will reduce the possibility of a dispute.

Building agreements used with sales of builder-tied plots often fail to provide for the retention of a proportion of the instalment payments.

This contrasts with situations where the buyer employs his/her own builder, where it would be fairly standard for a percentage of the building price (usually 5%) to be retained until practical completion and another percentage (usually 2.5%) to be retained until the end of the defects liability period.

Buildings insurance

The seller-developer should procure that the building insurance is adequate.

Sub-contractors

The building agreement should clearly set out which services will be provided by others (eg an architect).

Any liabilities under the building agreement to be undertaken by a sub-contractor or consultant

should be in writing and passed to the relevant subcontractor/consultant, by way of a JCT Short Form of Sub-Contract for example. The form of sub-contract should be consistent with the main building contract.

Lenders

In the past, banks used to take a somewhat relaxed approach in respect of this type of building agreement. However, we have lately seen a shift in this trend and a lender that is prepared to finance such a purchase would at least require the buyer to obtain a collateral warranty from the main contractor.

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