



## Take care when buying a property off the Plan

The team at RRR Lawyers specialise in assisting those who are purchasing off the plan properties. Off the plan developments have become increasingly common in light of major land developments, and apartment building construction taking place in the Melbourne CBD and surrounding regions. The term “buying off the plan” usually refers to purchasing a property that is not yet registered as a separate lot with the government department responsible for land title registrations, Land Victoria, or not yet built.

Buying off the plan can also refer to the purchase of a block of vacant land that is part of a subdivision, or a house or unit being built for sale where the land on which it stands is not yet registered as a separate title.

Selling property “off the plan” allows a land owner to develop the land in a less-expensive way, as the developer can negotiate lending rates with its Bank at a lower rate if some of the land, houses or units are already sold to buyers.

This is an advantage to the land developer and can also be attractive to a prospective purchaser who buys into an “off the plan” property in the early stages of the development.

A further advantage for those purchasing an off the plan property is that there is an off the plan Stamp Duty Concession which applies to purchases of land and building packages or refurbished lots. It allows a deduction of the cost of construction or refurbishment which occurs on or after the contract date from the contract price.

This means duty is only paid on the improved value of the land, the non-deductible costs and the completed construction or refurbishment including GST as at the contract date. There are risks for the buyer of property “off the plan” and a diligent purchaser should take care when entering into this type of purchase contract.

As with all property purchases, it is advised that a Contract Review is undertaken by an experienced legal practitioner to ensure that you are made aware of all risks and peculiarities within a Contract of Sale prior to signing.

### **The Contract and Settlement**

A contract for the purchase of property “off the plan” is a contract that does not have a precise completion or settlement date due to the incomplete nature of the building project and the subsequent separate registration process for the title to the land or new building.

“Off the plan” contracts generally include several clauses that are different to those in a standard contract for a registered lot. The major difference is the timeframe for the owner to complete the subdivision or the building on the land.

A standard contract will have a precise date for settlement to occur (either an exact date in the future or a completion period say “60 days after the contract is dated”). An “off the plan” purchase contract will still have a timeframe but it is usually stipulated that settlement will occur within a number of days following completion of the building project and registration of a separate title for the property being purchased.

Most off the plan contracts stipulate that once a property becomes registered with Land Victoria, settlement must be completed within 14 days, otherwise the purchaser will be required to pay penalty interest and may be issued with a default notice. The short settlement period often raises issues for purchasers with respect of their finance arrangements. As such, it is most important that we, as your legal practitioner, provide you with regular progress updates and notify you immediately once the process for registration commences. This is to avoid any delays, penalties, and ensure your finance provider is prepared to undertake settlement within the required timeframe.

If the Contract of Sale has not yet been signed, it is prudent to request a longer settlement timeframe to be included in the Contract, for example 30 or 90 days.

Off the plan contracts also often include a provision called a “sunset clause” which establishes a period within which the contract must be completed – say within 24 months of the date of the contract. This means that completion or settlement can be anytime in that 24 month period after the signing of contracts, subject to the land becoming registered as a separate title or the building works being finished. If the date passes the parties can terminate the contract.

### **Things to be aware of**

If you are buying a block of land “off the plan” in a subdivision the contract will usually include a clause allowing a variation in the area of that land that you will purchase on completion of the purchase, often because the local council and the land title registering authority have the final say on the area of the lots in the subdivision and may require the land owner/developer to change the areas. This reduction is usually capped in the contract at “not more than 5% of the area” in the contract and does not normally occur, but if it does your land area may be reduced but the purchase price is not reduced if the areas are changed.

When houses or units are sold “off the plan” the dwelling is not fully built or construction may not have even started until after you enter into the contract. The usual concerns with this type of purchase are that the progress of the building and the standard of the building work may be different to what you as the buyer contemplated. Remember you cannot see the finished product when you buy “off the plan” as the work will be done after you have signed the contract.

Often the developer will have a demonstration or “display home” to inspect showing you a model of how the buildings should look once completed, or they may have design

guidelines and artist's impressions of the building. These may not resemble exactly the finished building as some changes may be made during construction and you need to ensure that the contract provides some protection here. It is essential that you check the details of features, fixtures and fittings such as the stove, range hood, dishwasher, etc. and ensure that the quality of all finishes is clearly specified in a schedule that should be attached to the contract.

### **Market fluctuations**

You should keep in mind that like the economy, property market conditions fluctuate and with long-term building projects such as luxury high-rise units, the value of the units may change prior to completion of the building and your contract. The price you agreed to pay stays the same regardless.

### **Paying a deposit**

Your deposit could be tied up for some time between signing the contract and settlement.

Paying a deposit by way of a Deposit Bond (not always available in all states) or bank guarantee may be a better choice than a cash deposit when buying "off the plan". If you terminate the contract your bond or guarantee can be cancelled and you do not need to take steps to recover your cash deposit.

You should always seek legal advice if a request is made to release the deposit to the owner before the sale is settled. If you do pay a cash deposit you should stipulate in the contract who is holding the money and where it is being held, if possible it should be deposited in an interest bearing account by the stakeholder (often the real estate agent).

### **The developers financial position**

Construction companies and land developers who become insolvent or go bankrupt during construction can leave a trail of destruction behind them. Rising building and material and labour costs may force a site closure and you may be locked into a contract for a home that is not finished within the timeframe you expected.

In some states the builder will be required to have insurance which may provide some compensation for defective work or loss due to a bankrupt builder. You should seek legal advice to see what protection is offered before signing a contract.

While an early buyer "off the plan" has the best choice of the land or homes available in a project, and has a longer time to on-sell the property for potential profit, the strategy is not without risk. There are many factors to consider before entering into a contract and our property experts can help guide you through this process.

If you or someone you know wants more information or needs help or advice, please contact us on 03 9387 2424 or email [info@rrrlawyers.com.au](mailto:info@rrrlawyers.com.au).