

The dangers in 'Off-the-Plan' contracts

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Buying "Off the Plan" can be smart. It can mean savings of the purchase of property, and possibly an increase in the value of the property between the time of signing the contract and settlement. However, in a declining market, buying Off the Plan can also mean losses.

The Victorian Government has recently legislated a mandatory Notice that must be 'conspicuous' to purchasers of 'off the plan' properties (Section 9AA(1A) of the *Sale of Land Act 1962 Vic*). The Notice must explain there can be a change in the value of the

property between the signing of the Off the Plan contract and the settlement date.

Specifications and dimensions

Specifications and measurements in Off the Plan contracts are areas which can give rise to disputes. More surprisingly, the finishes stated in the contract are not what the purchaser receives, or the kitchen appliances are of lower quality than specified in the contract.

Sometimes, the actual dimensions of the property change to something smaller than what is specified in the contract! Also, on occasion, the developer may seek to extend the time for registration of the Plan of Subdivision.

Registering the Plan of Subdivision - "best endeavours".

JOSEPH STREET PTY LTD and others - v - KHAY TEK TAN and others [2012] VSCA 113.

The developer in this case wanted to rescind the 'off the plan' contract of sale. In the time period allowed for the registration of the plan of subdivision, the value of the property increased by a significant amount. If the developer could rescind the contract, the property could be sold at a higher price.

The Victorian Supreme Court (Court of Appeal) provided the following summary:

"This appeal relates to a contract for the sale of a home unit 'off the plan'. There were numerous issues at the trial but the only real issue remaining is whether the respondent vendors, who were also the developers, complied with their obligation to the purchaser under the contract to use their 'best endeavours' to procure the registration of the relevant plan of subdivision in a timely way. The critical question is whether the vendors breached the contract of sale by not seeking to enter into a certain kind of statutory agreement with the local council with a view to expediting the registration of the plan. If so, they were not entitled to rescind the contract as they purported to do, and they were liable to the purchaser for specific performance or alternative relief. In our view, the vendors were in breach of the contract in that way, and this appeal should be allowed accordingly."

In other words, the developer's failure to expedite the registration of the plan of subdivision by way of a Section 173 *Planning and Environment Act 1987 (Vic)* Agreement meant that the developer was able to be pursued for breach of contract damages.

Conclusion

The prudent purchaser will seek the advice of a solicitor before signing an Off the Plan contract.

It is essential for the purchaser to know what can change, or is allowed to be changed, according to the Off the Plan contract. If you are considering an Off the Plan purchase, please contact Lovegrove Solicitors before signing the contract for specific advice on your rights and responsibilities and any risks you face.

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