

REAL ESTATE LAW ALERT

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Property developments and buying off-plan: What you need to know

Property developments in South Africa are growing, and buying off-plan from these developments is becoming a popular choice. This helps developers to finance the project, as having pre-approved sales allows them to obtain the necessary funding for the construction, and this form of purchasing can also save the purchaser money as transfer duty is not applicable.



Property developments and buying off-plan: What you need to know

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"Buying off-plan" is essentially purchasing a unit within a sectional title or erf within a home cluster scheme prior to it being erected and built. The responsibility then lies with the developer and builder to complete the building to your satisfaction and on time. When buying off-plan, the developer will provide you with draft plans of what the property will possibly look like. As the draft plans are not final, there may be a need for the builder and developers to deviate from the draft plans, but they will always need to seek the purchaser's approval should the deviations impact them.

As with anything in life, there are some risks to be aware of when deciding to buy off-plan, but these risks decrease as construction nears completion. Therefore, the purchase price of units will usually be lower at the beginning of construction and then increase towards the end of construction.

RISKS OF BUYING OFF-PLAN

The rule of thumb is: do your background work before committing to buying off-plan. Ensure that the developer is reputable. Speak to various estate agents and ask whether you can obtain confirmation from them as to other developments completed by the developer and possibly do internet searches on the developer to try and ascertain whether other developments done by them were successful. Once you have established that the developer is reputable, even if there are some defects within the building, you can rely on them to fix the problems. A dependable developer will ask the purchaser to inspect the building's finishes and fixtures within the first few specified days of occupation and then to provide the developer with a list of defects so that they may be fixed. Some of the things to have a look at as possible defects are:

- All taps and showers are in working order
- Cupboards open well and are installed correctly
- Tiles are laid straight
- Plugs and electrical work are in working order
- The stove is in working order
- There are no scratches, cracks or marks on the walls
- The walls are straight
- The roof and patios are sealed

The National Housing Consumers Protection Measures Act 95 of 1998 was enacted in 1998, and under this legislation the National Home Builders Registration Council (NHBRC) was established. Its mandate is to protect the interests of purchasers by ensuring that builders comply with the prescribed building industry standards. It thus protects purchasers

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from unscrupulous builders who deliver sub-standard houses, bad workmanship and the use of poor quality material. The NHBRC holds all builders who register with them accountable and holds them to a wide range of requirements before they can commence building. One of these requirements is that a Certificate of Enrolment needs to be obtained before the foundations of the development are laid. To fulfil this requirement, each builder must provide the approved building plans of the development as well as a specification schedule of the actual construction to be done and the building materials the contractor intends to use. The approved plans, together with the developer's building contract must be supplied to purchasers before the construction commences.

The NHBRC further inspects all enrolled homes at key stages of construction to insure against poor workmanship and to allow them to issue a non-compliance to the builder should that be the case. The

NHBRC also provides purchasers with warranty cover for any minor defects which are identified within the first three months of occupation, roof leaks identified within the first year of occupation and cover against major structural defects within the first five years of occupation. Should the builder be unable or unwilling to rectify the defects, the NHBRC can rectify them, following the completion of a complaint procedure by the purchaser.

RECOURSE FOR DEFECTS

The reality though is that most defects and signs of deterioration only make themselves apparent within a couple of years after the buildings have been constructed. What happens then?

The Sectional Titles Act 95 of 1986 (STA) provides that a body corporate may institute legal action against a developer by way of a special resolution with the support of at least 75% of all owners in the scheme. The body corporate then needs proof that the workmanship was poor and that sub-standard materials were used in the construction process.

This route is a costly one as litigation is not cheap. The glaring truth is also that the STA places responsibility on the body corporate to maintain and repair any exterior damages to the buildings within the scheme by means of having the owners of each unit pay their respective levies, and the owners of the units are then left to repair any internal damages to their specific unit.

Another pitfall is having the developer promise to complete the construction within a specified time period only to have that time pass without the purchaser being able to take occupation of their unit and construction still being far from completed. Here again, a purchaser's recourse would be to approach the NHBRC for relief and appropriate action to be sanctioned against the builder. The specification schedule mentioned earlier should also be constantly monitored and updated to ascertain timeously whether there will be any delays and for these to be communicated to all parties involved.



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BENEFITS OF BUYING OFF-PLAN

However, there are also many positive sides to buying off-plan besides saving on the transfer duty payments, including that only a small amount of cash needs to be paid upfront (usually between 10 to 15% of the purchase price) to reserve the unit. The payment of the balance of the purchase price (if paying cash) will only be due on completion and it is also possible to finance the purchase through a loan with a bank. Although no transfer duty is paid to the South African Revenue Service (SARS) with these types of sales, it does not mean that SARS does not “get a slice” – rather the developer pays value-added tax on the transaction as they are considered to be selling “goods” as part of the stock in their business.

Units bought off-plan usually appreciate in value by the time transfer is effected, which is an attractive feature for investors and first-time buyers. Often, purchasers are given the freedom (with a few restrictions) to choose their own internal fittings and finishes for their units, but such options are developer specific and purchasers would need to enquire with the developer if such options are available.

Although buying off-plan is not for the faint hearted, once you have ascertained that you are working with a reliable team of builders and developers, it can bring you excellent results.

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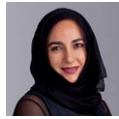
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