



Buying off the Plan

Over the last few years purchasing property, particularly apartments, off the plan has been a successful mode of investment for some people. The cooling property market will no doubt reduce the number of apartments being constructed however, there are a number of companies still marketing new apartments and stand alone houses off the plan.

While we believe this investment strategy can work for some people, would-be purchasers need to be aware of the significant risks associated with it.

Delay between signing contract and settlement

One of the issues with purchasing off the plan is that there is a significant time lag between signing the contract (often unconditional) and the building being completed. In a rising market this can have a positive effect in that the property is likely to have gone up in value before you are asked to settle. The reverse occurs in a falling market in that you are locked into a purchase price which may be well above the market value of the property. When you come to settle you may have to put in far more money than you anticipated because the valuation for the bank may not be as high as anticipated.

The time lag may also mean the building costs increase the meantime and the developer may ask for further monies. We have seen this happen in both apartment developments and in stand alone houses.

Deposits

To attract you to a development, developers often ask for only a small initial deposit, say \$5,000.00. In some cases, these attractive financing options are paid for by the purchaser in inflated purchase prices. Regardless of the size of the deposit you should always insist that your deposit is held in a solicitors or real estate agents trust account until the title for the property issues (all agreements off the plan will be conditional under S225 Resource Management Act so will essentially be conditional until title issues). The BlueChip experience showed that unless you insist on this, the deposits can disappear if the company goes into liquidation.

Independent Advice

We think one of the real issues with purchasing property off the plan is the use by developers of the “one stop shop” method. This is where purchasers are given the hard sell and then immediately handed over to financial planners, mortgage brokers and solicitors recommended by the developer, sometimes on the same day. The danger is that these professionals are not entirely independent and may not fully explain to you the risks of the venture or the nature of the contract. Before you know it, you are bound to an unconditional agreement.

Always insist on consulting YOUR OWN accountant, lawyer and mortgage broker. NEVER rely on the developer’s “independent” valuation.

Form of Agreement

Contracts for off the plan properties will often contain clauses which are favourable to the developer. Remember, they draft the contract for their own purposes not for your benefit. Some examples of these are:

The developer being able to significantly change the development or change the specifications without your approval;
Clauses that limit the liability of the developer or limit claims against it;
Provisions that allow the developer to lock the body corporate into a management contract for a significant term without any review provisions;

- Clauses which waive the provisions of the Resource Management Act;
- Clauses which allow the vendor to require settlement without a code compliance certificate having issued for the property;
- Lack of a sunset clause which allows you to get out of the property if the building is not completed by an agreed date.

Pitfalls

Some of the other issues we have seen in off the plan contracts are:

- Very general specifications which allow the developer to down-spec the development and construction;
- Building plans without measurements on them, so it is difficult to see the size of the apartment;
- Rent guarantees – this is where the developer guarantees rent for a set period of time. The difficulty with this is that you end up paying for it by way of an inflated purchase price and there is no guarantee that that level of rent will be sustainable once the guaranteed period is over. We have seen a number of cases where the market rent is significantly less than the guaranteed rent;

Summary

While purchasing off the plan can allow you to purchase property at a discount, there are significant risks in doing so. The current slow property market may rebalance the bargaining power between purchasers and vendors, however we are aware that there are still a number of companies in the marketplace selling apartments off the plan with hard sell tactics.

Our best advice is to come and see us for an unbiased opinion on your proposed purchase before you sign the contract.