



Legal Clinic: questions and answers on Thailand property legal issues

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# Is it really a 'special' deal?

**Q.** I have been condominium 'shopping' in Bangkok for the last few weeks, as I heard that some developers are offering special prices, or enhancing packages to motivate sales. I have identified three condominium projects I like, but when I actually look at the terms and conditions on the offers, it doesn't seem like certain elements are 'special' at all. The developer is still asking the buyer to pay the transfer and registration costs, I am also obliged to pay a large sinking fund payment up front, and if I want a foreign freehold unit there is a premium to pay. If these items appear in the terms, can I still negotiate? What can I do to protect any special terms I succeed in securing during the negotiation? – *Brad Stonewall, Australia*

**A.** If you are at the point where you haven't signed a reservation agreement yet, in a market where developers and agents are actively seeking buyers who have liquidity and purchasing power, then you are in a good negotiating position. Even if on the printed 'terms sheet' certain conditions appear, this doesn't mean those conditions can't be changed to suit the results of your negotiation. You should contact the agent or developer of the project you are interested in, and if you really do intend to buy, make an offer conditional upon contract but also conditional upon the developer absorbing the registration costs. You can negotiate a discount on the price per square meter, perhaps if you offer a larger down payment on the first installment. There are a myriad of possibilities, but do not feel constrained by the fact that at the first stage you may be faced with a pack of documents presented in a way which doesn't look flexible to change. Now is a good time to negotiate some variations. When these have been negotiated, your appointed lawyer can attend to formalising the changes into the reservation form; the full sale and purchase contract and other necessary supporting legal documentation.

**Q.** I walked around a few condominium units that I have on my shortlist to buy, and then requested specifications lists from the agent for the unit. The specifications list barely resembles the show unit specifications and I feel completely misled about the price of the unit and the actual specifications of a standard unit. Even if I do proceed to purchase notwithstanding the lower specifications, or if I 'upgrade' to the show



**FORCING THE DEVELOPER TO AGREE CAN SOMETIMES REQUIRE A DEGREE OF PRESSURE.**

unit specifications, then I am now unsure as to the quality of the specifications, and what my legal rights would be if the specifications were not those agreed or supplied to me. How do I protect myself if I proceed to contract? – *Marvin Hammersmith, Maldives*

**A.** If you agree to any specification changes, then these should be attached to the contract. If you see that certain items don't appear on the specifications list, but are stated by the agent and developer as being included in the price, then you should insist that these are placed in an addendum to the specifications list, given the doubts in your mind following the show unit. Following the revisions to the condominium act in July 2008, there exist stronger legal provisions obliging the seller of condominiums to place sales and marketing material in the office of the condominium juristic person manager's office for inspection. If marketing materials were misleading, then this would become apparent upon deposit of the materials in accordance with the law. The rights that you would have if you had been misled regarding the condominium would be consumer protection rights under general consumer protection law, specific rights under the condominium act, and then general rights in respect of any commercial documents not governed by the condominium act that might relate to the property (such as a rental program agreement for example). It seems simple enough, but actually forcing the developer to agree

to inclusion in the contract can sometimes require a degree of pressure from you and your legal team.

**Q.** I have been offered a large discount on a project in which there are over 400 units. The agent informs me the developer is offering the discount if I am one of the 'early buyers' in the project, as the construction period is currently set at 3 years. I like the location of the condominium, and the group backing the developer is an experienced real estate asset management and development team from overseas. I think that 3 years is a very long time to wait for a build and I am concerned that like most things in life, the condominium will be delivered late. How can I protect myself? Three years is the absolute maximum I am prepared to wait, and not a day more. – *Samuel Ekoku, Ghana*

**A.** It is very likely that the contract will have a proviso for force majeure or 'events beyond the control' of the parties, which would relieve the developer of the precise delivery time obligation of 3 years in certain circumstances. Furthermore, there will be default provisions in the contract relating to notices being served by one party on another in the event of a breach of contract, providing time to the defaulting party to remedy or 'fix' the breach within a prescribed period of time. This means that the 3 years is unlikely to be precisely 3 years contractually. However, in situations where you may believe the capital appreciation of the product over the 3 year period, isn't sufficient enough to justify waiting any longer, then you can negotiate a 'buy-back guarantee'. It is best to have a buy-back guarantee as an option exercisable by you at your discretion. That way if values do increase, you can choose to keep the unit. Developers will strongly resist this, but if you are an early buyer you might be lucky enough to secure the guarantee. You should also consult with your legal team on the contents of a guarantee document, and its enforceability.

This legal clinic was co-written by Desmond Hughes (Partner) and Christian Glanville (Partner) based in the Phuket and Koh Samui offices of Limcharoen Hughes & Glanville (formerly known as Belmont Limcharoen) respectively, which has also offices in Bangkok and with a new office in Ho Chi Minh City, Vietnam, now open [www.limcharoen.com](http://www.limcharoen.com)