



### Legal Clinic: Questions and Answers on Thailand Property Legal Issues

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# How to legally handle the handover

**Q.** I bought a 'luxury condominium' in Bangkok back in 2008. I obtained a discount of 15 per cent off the advertised price for 'buying early. The unit was due to be delivered in November 2009, but it is still not ready for 'legal transfer'. I have tried polite inquiry, angry accusations and have felt the complete range of emotions as to why I still don't own my unit in February 2010. All my inquiries are met with complacency from the agents, who have formed a wall between myself and the actual 'seller' or 'developer'. In actual fact, the quality of finishing in the unit is good, it looks like the common areas will really be as presented in the marketing materials, but I want to make a point about the seemingly nonchalant attitude of the developer and agent to timing. What can I do, legally? - *Leonard Ranieri, Rome*

**A.** From your inquiry it is clear you do not wish to terminate your contract and you are quite pleased with the finishing of the unit. Therefore, it would not be appropriate to serve any kind of termination or serious default notice under your purchase contract. However, it would be most likely that the developer, when actually ready to transfer the unit, will be keen for you to pay your monies very quickly, as it is most likely that the delay is not of financial benefit for them. Notwithstanding the seeming nonchalance of the agents, it is quite likely that the legal registration of the condominium has been delayed, a matter about which the developer can only attempt to expedite, without actually suing the local authorities, which is not an advisable act generally for developers other than in extreme circumstances.

You could write to the developer and inform them of your suffering of inconvenience, and ask them what they propose to do in terms of compensation to alleviate the pain of late delivery. You may even want to make a suggestion as to what that compensation may be. Other than that, there are no direct legal remedies to follow in the situation you describe, without escalating the matter into an issue which could result in your hand being forced to terminate the agreement you wish to maintain to purchase the unit and



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have it legally transferred to you. Part of the commercial justification for the developer for failing to offer compensation directly, may be your initial discount with an implied assumption that the unit might be late. You should double check your contract to see if there are any late delivery penalties, just in case you missed them, but they are generally not included in consumer oriented contracts of this nature.

**Q.** I have bought a condominium unit in a mixed use resort which includes a marina. It was represented to me that, by the time my unit is finished, the marina would also be completed. However, the marina has now been delayed as the developer has had some issues with funding, and my sales contract doesn't contain any protective provisions linked to the common facilities and surrounds of my unit. I elected not to use a lawyer on the advice of my sales agent, who told me that a lot of other buyers had bought so there wasn't

any need for me to spend money on a lawyer. Now I regret that decision. Is there anything I should do to protect or secure my position? I don't want to accept the unit, if the marina isn't finished.? - *Ikey Solomon, Australia.*

**A.** In actual fact, based on the developer having issues with funding, you should seek to have the property transferred to you immediately, but reserve your rights and position with respect to the representations made on the marina. You will need to seek advice on how to draft correspondence, so you do not inadvertently accept the lateness of the marina by implication when transferring the units. Any delay from the developer on transferring the unit should be taken seriously, and you should set a clear and definite time for your lawyers to attend the land office to register title to you. Without legal counsel you had failed to negotiate any link in the contract between the marina completion and completion of your unit, so your position is weakened considerably. Notwithstanding this fact, if it is possible to prove loss (financial) then you may be able to claim this back from the developer (such as flight tickets to visit Thailand from overseas, and accommodation). Loss of enjoyment and use of the enjoyment is far more ethereal, and legally you will be hard pressed to establish a claim without a specific contractual right covering this issue. Based on this experience, it is recommended that you also take steps to analyze, in detail, the proposals for managing the mixed use development and marina, to ensure that the developer has a competent plan to manage quite sophisticated real estate assets, the maintenance and control of which directly affect the value of your unit.

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