



Legal Clinic: Questions and answers on Thailand property legal issues

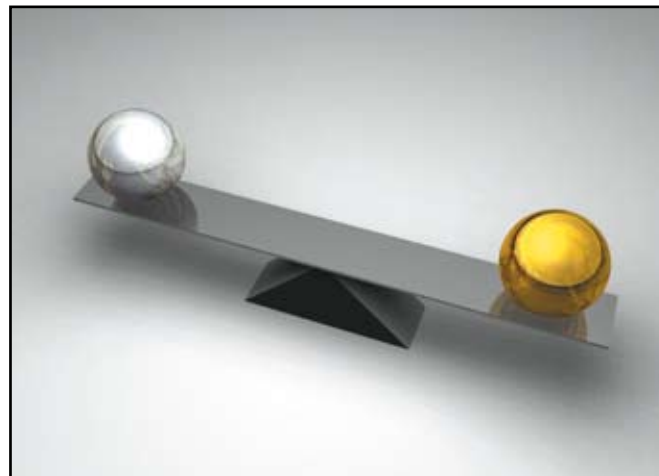
BY DESMOND HUGHES AND CHRISTIAN GLANVILLE

When to get the lawyers involved

Q. I am investing what I consider a small amount of money into an off plan purchase in a managed residential and resort estate. I don't think the developer will actually negotiate the contract because they generally are known to insist on standard non-negotiable terms. The resort is actually branded by a reputable operator so do I actually need a lawyer at all? I would rather save unnecessary expenses.
- *Axel Favre, Switzerland*

A. If you are investing into a resort-managed project, you should bear in mind of course that the owner will have its assets and liabilities, and will in many cases simply outsource the management of the resort or project to a reputable third party, who will not take responsibility for the legitimacy of the project, only the quality of the operation of the resort or management of the estate. Therefore, you should still consider looking behind the assets by checking land title, building regulation and compliance and issues such as access to the property and registered common area rights. In terms of the contract, even if the contract according to the 'seller' or 'developer' cannot be changed or negotiated, there is some value in seeking a review and opinion on the terms, so you are at least aware of major weaknesses and strengths of the contract. You may be surprised for example, if your rights could be terminated for non-payment of management fees, or there could be some rules and regulations in the contract which were not made clear to you at the sales office. It is possible to obtain an 'overview' engagement from law firms, where you know there will not be hours of negotiation on a particular topic or contract. A review-only engagement might suit the circumstances you describe, as middle ground between having no advice or representation at all, and over engineering a matter unnecessarily.

Q. I have paid an architect to design my ideal home a deposit of 30 percent of the contract price in advance. They promised to deliver designs within 3 weeks, and now, 3 months later I don't have any designs at all and the designer keeps telling me that my requirements are quite sophis-



IT IS POSSIBLE TO OBTAIN AN 'OVERVIEW' ENGAGEMENT FROM LAW FIRMS.

ticated, which results in the delay. The problem is that I know the designer is good, but I think they are taking on too much work, and just pushing me back to test my patience. If I use lawyers, I think I might destroy the relationship and then my designs might not have the care and attention I am looking for. What should I do next? What are my rights?
- *Anne Gains, Arizona*

A. If you have exhausted all polite means of hurrying along the architects, then it would be reasonable to write a letter demanding a refund of the advance deposit, or immediate production designs to the standard promised in accordance with the design brief. On legal letterhead, given the fact you haven't had much impact alone, this may prompt the designers to reallocate you. It seems disrespectful to bump you to the back of the queue after paying a deposit, so you should only contemplate this company completing their work as opposed to you simply demanding your monies back, if you have continued confidence in their abilities notwithstanding their delays. In terms of legal rights, if no services have been carried out, but a deposit has been taken, you are protected under consumer protection laws in Thailand, and can,

if matters deteriorated to a situation where your monies had simply been utilised with no works carried out, sue the company as a last measure. Your rights would be quite clear in such a position, based on the information you have provided.

Q. I struck a special deal with a developer with regards to specifications for interior fit-out. We corresponded on the costs of the variations, and I actually approved the variations by email when described as fitting my request. However, when I was called out for a final inspection, the quality of the interior fit out and items such as the kitchen units and work surfaces are all sub-standard. I expected the developer to project-manage this, and to understand the quality I was looking for by changing the specifications. I know that they can't re-fit the whole property, but should I get lawyers involved, or negotiate alone. What are my legal options if there is no co-operation at all?
- *Simon Carter, Ireland*

A. This appears to be a communication issue, with a possibility of breach of duty and breach of contract if the variations agreed were properly documented, and if the specifications you agreed to were different to those delivered. If this is clear, then you could demand at the cost of the developer a re-fit of the correct items. Where matters are ambiguous, then you would be better negotiating changes to those fundamental items you are unhappy with, and seeing if you can save costs on the labour with the developer by reaching an amicable resolution. If the matter becomes hostile and your contractual position is weak, then the developer might refuse to co-operate and then you would have the litigation cost; rectification cost; and cost of trying to recover the expenses and costs.

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