



Legal Clinic: Questions and answers on Thailand property legal issues

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Negotiating with developers

Q. I have heard that whilst there has been an economic slowdown, I might be able to negotiate certain items or even the purchase price in respect of projects I am interested in. Is this something that a law firm should assist with, or should I deal with this personally. What are the limitations of negotiation? Should I be aggressive or is it more productive to negotiate 'softly'? - *David Chedwick, Barbados*

A. If you are involved in purchasing in a well organized and properly managed development either off plan or already constructed, you will be dealing with property industry professionals, quite seasoned and used to negotiating 'deals' with investors, buyers and other real estate industry third parties. Therefore, they will be prepared for most forms of negotiation. The use of a lawyer in a negotiation as opposed to conducting the negotiation yourself will have pros and cons, although we believe the cons outweigh the pros in terms of leverage on customer to developer relationships. It is not recommended that the use of lawyers in a negotiation is used as a tool for distancing you from the commercial driver for negotiating more preferable terms. A development team will be very much aware, if they have to negotiate with lawyers on commercial terms, that the actual instructions are being issued and actions being driven by the principal – the client. The developer may also react adversely to a third party trying to 'chip' at their profit margins, but may be more accommodating when dealing with the 'customer' or 'consumer' directly, especially prior to the signing of a reservation agreement for a property.

In terms of your negotiating style, it is advisable to run your strategy, or proposed strategy, past your legal adviser, as of course in terms of negotiating, the type of training your lawyer should have will benefit you. There is a whole school of learning attached to negotiating techniques, and there is no 'one size fits all' strategy for negotiation.

Q. I have been informed, mid-project, that the dimensions of my unit and layout have to



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change, due to some adjustment the developer has been forced to make through implementation and enforcement of planning regulations as per the building permission for the project. In my opinion, the developer should have had the construction plan set out as to comply properly with the appropriate laws. I don't want to exit the arrangement, as the adjustments are minor, but I am now going to lose some space, and convenience in layout/format of the unit. What can I do to negotiate my position fairly, but be compensated for the inconvenience? - *Paul Rossi, New Jersey*

A. In extreme cases of unfair behavior, you would consider filing a complaint with the Consumer Protection Board in respect of misrepresentation of the unit you had contracted to purchase. However, if your loss is quite small, and there is limited financial impact, you may be better negotiating directly with the developer some minor form of compensation for the inconvenience. You should consider that financially, the cost of materials and labour for the unit might actually be the same, notwithstanding the adjustment to dimension and so the range of 'movement' for negotia-

tion of compensation with the developer will be limited. You may be able to negotiate some kind of discount on furniture, or procure some usage of common facilities or services at a discount, and attempting to win something is not necessarily a bad thing. However, if you do want to keep the unit, this overall objective should be borne in mind, in the event that the developer offers to buy back the unit at your purchase price. The strategy for this particular negotiation should be that of what is practically achievable and fair in the circumstances.

Q. I love to bargain, and have recently appointed a contractor to build my dream house, albeit a modest size by some standards. I have read that construction costs have reduced and therefore I would imagine that the price for building my villa will also be reduced accordingly. The contractor is 50 percent complete and I should like to attempt to negotiate a re-visit of the original price. What should my negotiation strategy be, and how likely is it the contractor will accept? What are the risks? - *James Gayle, Scotland*

A. The original price will have been based on quantity and quality of materials, time and labour. If certain materials are much cheaper, then you could sit down with the contractor and have a closer look at any significant savings on a line by line item basis. Labour and time shouldn't change much with a reduced construction cost. You must bear in mind during such negotiation that a demobilization of the contractor and a change of the contractor could detrimentally affect your budget beyond the reduction you seek to negotiate, so a measured, calm and planned approach to the negotiation should be adopted.

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