



Legal Clinic: Questions and answers on Thailand property legal issues

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# Group Disputes

**Q:** I have an issue with the property I bought from a developer which has not been constructed and is long overdue. It has come to my attention that the developer may have utilised funds for a purpose unconnected to the development, or at least, badly managed the funds and I suspect insolvency may be the financial position of the developer. There is a mortgage registered with the bank, and all I have is a signed sale and purchase agreement and no legal title. Following this issue becoming serious, a group of owners have come together to discuss if we can file claims as a group, or at least act as a group to focus our claims. How do we go about this in Thailand? - *James Randall, Bristol.*

**A:** There are two principal potential claims which may apply to the scenario you have described. The first is breach of contract, a claim which would fall generally into the consumer protection laws of Thailand. In order to have any kind of 'legal standing' with regards to potential other steps to protect your position, you and each of the owners should exercise default procedures under the contract by serving termination notices, subject to review and recommendation by your lawyers that the correct procedures are followed; and if you suspect already the default will not be remedied, instruct your lawyers to file a claim under the consumer protection act. The second issue, that of insolvency, is far more complex and needs to be managed carefully. If you and a group of owners believe that there is commercial viability in relation to the project, you could apply for administration proceedings, for the court to appoint an administrator to attempt to 'restructure' the development company.

This is different to insolvency proceedings. In insolvency proceedings, there is no restructuring, there is a more direct calculation of priorities of interests (registered and unregistered securities, so the bank's interest takes priority); and assets against liabilities. There may be an auction of the assets, and this can take a significantly long period of time. If there is any chance of restructuring successfully, it is worth the strongest group of owners club-



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bing together and making a financial plan. This of course, must also involve discussions with the bank and a plan of which commercially the bank also approves of, if it doesn't intend to foreclose on the mortgage.

Overall, a series of claims must be filed for the consumer protection cases, and a group can be involved in and manage together a restructuring action. Good project management; sensible commercial reasoning as to the cost benefit analysis of litigation/legal costs v. total recovery of investment costs should be conducted at an early stage. It is also recommended that the costs of the cases are collected by the owners and held in an account, to be used to pay the appointed lawyers, so that there is no technical dissent resulting in prejudice to the interests of the majority. The alternative to this method is to operate a 'drop off' policy, so those claimants that at critical junctures do not re-top up the fees to support the litigation, are deemed to be dropping out of the group from that point onwards.

**Q:** The property that I have bought in an apartment project has been indicated as 'complete' by the developer, but there are still in my opinion numerous defects to be remedied within the apartment, but also around the common area. It seems that my requests for these defects to be remedied are being ig-

nored and any attempts to push the developer amicably, without engaging lawyers, has been unsuccessful. There are several buyers in the same position as me, who have defects in their units, and are unhappy about parts of the common area. What is the most effective way to make a claim? - *Simon Valmary, Bordeaux.*

**A:** There is little benefit to you personally in making claims regarding specific defects in your unit's internal space as part of a group. If you add up the total number of internal defects across all units, you could actually become part of a bigger problem with less priority attached to your interests if you join a group of internal defects claimants. However, in relation to common area defects, there is more weight behind a group of owners taking action or listing their issues with the developer. If the owners committee is not yet properly formed, then proper organization of the persons representing the owners prior to handover is necessary which takes some effective management. Often the most vocal and energetic owners will see that an issue is worth solving through some expenditure on legal fees, but not all the owners will be happy about additional costs simply to ensure that an entitlement contracted for and paid for is actually delivered in practice. However, it is normal for a developer to focus its mind on delivery when a legal team is assisting a group of serious owners, as the developer will know that the owners are receiving practical experienced advice in relation to their rights and to the contract and its application in the context of the laws of Thailand. Teaming up with others in respect of common area defects, is therefore generally beneficial to the collective of buyers.

This legal clinic was co-written by Desmond Hughes (Partner) and Christian Glanville (General Manager) based in the Phuket and Koh Samui offices of Belmont Limcharoen respectively, which has also offices in Bangkok and with a new office in Ho Chi Minh City, Vietnam, opening soon. [www.belmontlimcharoen.com](http://www.belmontlimcharoen.com). Put your own legal questions to [Desmond@law@property-report.com](mailto:Desmond@law@property-report.com).