



Legal clinic: Questions and answers on Thailand property legal issues

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Contractual variations to property designs

Q. I originally purchased property by choosing from 4 styles offered in a development – A; B; C and D. I chose style D, but later on the developer informed me that sourcing certain items meant that my villa would be more of a hybrid of C and D. I have later on discovered that actually the hybrid of C and D appears to have been a cost cutting exercise, and not necessarily a sourcing of materials issue at all. I did agree a fixed price, and I have made all of my payments already. What can I do about this situation? I am quite upset as some of my neighbours seem to have better quality materials in their units than me?
- *Teddy Brentwood, Essex*

A. In your original sale and purchase contract, specifications should have been included as an integral part of the agreement between you and the seller/developer. If you agreed on specifications D, but later either verbally or in writing made concessions and continued to make payments, then your position is quite weak, unfortunately.

Practically, in order to resolve deficiencies or a lack of appropriate product commensurate with the items sold to you, you would need to collect evidence that better quality products, or equal quality products forming part of another unit in the development exist, at a cheaper price than you paid for – and to ‘petition’ the developer for a refund of the difference. If the developer is remotely concerned about reputation, then they may consider this, but they will consider quite conservatively in view of their most likely knowing that your legal position is weak.

Q. I have bought a luxury villa, at a combined allocated cost of ‘lease’ land and villa construction of US\$3m. The villa forms part of a ‘luxury’ brand, and is associated with a famous design team. I was told that the types of changes I should like to make would be vetted and scrutinized by the design team prior to acceptance of the changes and that variations would not be guaranteed, which I accepted as part of the deal. Notwithstanding the stringent regulations set upon me, I now find that the unit, being alleged by the developer as being ‘finished’ hasn’t been finished properly or to an adequate standard at all. I find this situation exacerbated by the fact that my proposed variations were scrutinized so closely, but quality hasn’t been scrutinized in the same way on the developer’s side. Do I have



“I HAVE IDENTIFIED 665 DEFECTS. DO I HAVE A RIGHT TO A REFUND?”

any rights and who should I enforce the rights against? – The Developer or the Design Team? The Developer has said that some of my variations caused the quality defects, which I maintain should have been handled better by the developer. - *Chris Cicero, Cincinnati*

A. Contractually, you would most likely have entered into contracts of lease with the land owners, and a design and build or construction agreement with the developer, not the design team. This means that you have a ‘right of action’ in law, against the developer. Any case against the design team is weak, unless you paid some kind of fee directly to them, or there is a direct contractual or implied form of legal relationship. If attempts to solve matters with the developer fail, you could make written enquiries of the design team as to their extent of involvement in the process, indicating that may enter into litigation with the developer which may ‘embarrass’ the developer who will most likely have some kind of branding or marketing agreement with the design team if the design team is a luxury brand.

This may or may not prompt the design team to distance their designs from the actual implementation of the designs in the building works. You may also uncover how much of your variations were or were not actually screened properly by the design team. If there is a discrepancy, then you may utilize this to prove to the developer that their allegations on the variations interfering with or preventing proper quality workmanship and works in the property are spurious. When you submitted variation requests, if such variations were likely to

impact negatively on another aspect of the villa, it is the developer’s responsibility to inform you of the same, as the developer is the ‘expert’ in the equation. If the developer failed to notify you of issues, then it has most likely failed to perform its duties properly under the contract, if the contract has been drafted properly.

Q. I have identified 665 defects in my off-plan but now completed unit, relating to variations works, at the handover stage. Do I have a right to a ‘refund’ in such circumstances? - *Patrick Kenly, Ireland*

A. The contract you signed for purchase will most likely not have a refund provision in relation to minor structural defects, if those are the type of defects you are referring to. In a normal commercial arrangement, a party ‘in breach’ of a contract should be provided adequate time to remedy a breach, and if the defects were even deemed breaches, then certainly there would be a notice to be served affording time to the developer to correct its breach. The ‘snagging process’ as it is typically referred to but is more properly known as ‘defects remedial works’, is designed to avoid contractual disputes at the time of handover. If the snagging is handled professionally, then even with a large number of ‘snags’ a developer and its team should be able to conduct remedial works, and relay the length of time the remedial work will take to you, so that you can assess how long any delay might be to delivery of the properly finished unit. It is better that you give ample time for snagging to be completed rather than push to hurry remedial works which might result in more mistakes. That said, if the process continues too long and is performed inadequately, you may wish to consider pursuing a claim for damages and expenses, if the developer doesn’t propose to compensate you properly for the inconveniences caused.

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