

A new tool for real estate buyers

Thailand's property market is still on the rise and highly competitive. Advertisements for new real estate developments are everywhere, and with them are promises of freebies.

While some projects offer free air-conditioners, televisions and furniture, others promise gyms, swimming pools and even nurseries. Often such promotional gimmicks are not referenced in the purchase agreement. So what happens if, after project completion, the developer fails to deliver on its promises?

The real estate company would, of course, refer to section 456 of the Civil and Commercial Code, which states that an agreement to sell or to buy any real estate property, or a promise to sell such property, is not enforceable unless there is some written evidence signed by the party liable.

However, such companies fail to acknowledge a 2002 Supreme Court judgment (2729/2545) which stated that real estate companies who do not provide infrastructure as advertised are in default of the agreement. This ruling is typically interpreted as stating that real estate advertisements form an integral part of the agreement. This decision is one example of a law available to protect consumers better.

In addition, in 2007 the Supreme Court, viewing that sufficient legal tools were not available for Thai consumers to defend themselves against unfair business practices, proposed the Consumer Case Procedure Act (the Act) to the National Legislative Assembly. The Act was passed in February 2008 and became effective on Aug 23, 2008.

Under the Act, any law requiring the existence of a written and/or signed agreement prior to filing a court complaint, is not enforceable for consumers attempting to assert claims against business operators, provided that (1) the consumer has paid a deposit to the business operator, or (2) the consumer has performed part or all of his obligations under the agreement (Section 10).

In addition, any announcement, advertisement, representation or act of a business operator that leads a consumer to understand, at the time of entering into the agreement, that the business operator will provide services or other infrastructure or perform certain additional services for the consumer, will be viewed as integral to the agreement between the consumer and the business operator (Section 11).

Therefore, when purchasing property, if certain conditions or any understanding between the two parties are not set forth in the written agreements, it is important for property buyers to keep all brochures, flyers, information sheets, project layouts and other marketing materials, including pictures of billboards, relating to the projects.

Also, it is recommended that during the sales negotiations with the real estate company, the consumer be accompanied by someone dependable.

If things go wrong, although the agreement may have been made verbally, with such documentation in hand and a witness who is ready to testify, the consumer plaintiff may present to the court documentation and a witness to testify with respect to the unwritten conditions offered by the seller (Section 11).

The Act also contains several procedural rules aimed at easing the process by which consumers bring claims to the courts against business operators. For example: the burden of proof is shifted to the business operator; complaints can be filed orally in some instances; the court may consider awarding punitive damages. It is expected that this Act will change the landscape of consumer cases in Thailand.

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