

## Standard purchase agreements : Protecting condo buyers

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The property sector in Thailand has seen rapid growth over the last decade, with many Thai and foreign investors purchasing units in condominium projects, for both investment and residential purposes.

However, some purchasers have encountered problems with condominium developers that have not completed their projects as promised due to lack of financial support, problems with contractors, or other external financial problems. In some instances, the developer fails to perform its obligations under the condominium purchase and sale agreement or cannot complete the project and transfer the unit to the purchaser within the time frame that is specified.

A purchase and sale agreement is an instrument produced to the purchaser before the purchaser takes ownership of the unit in his or her name. Because the content is generally and firstly proposed by the developer, many unscrupulous developers have been known to draft purchase and sale agreements in a manner that avoids responsibility and takes advantage of purchasers.

In some countries, this problem has been addressed by requiring all condominium project developers to use a standard agreement format when selling a condominium unit. These standard agreements contain terms and conditions that are favourable to the purchaser, in an attempt to protect the purchaser in case the developer defaults.

In Thailand, the Interior Ministry specifies a standard format for the sale and purchase agreement of a condominium unit, as required under Section 6/2 of the Condominium Act B.E. 2522 (1979) and amended by the Condominium Act No. 4 B.E. 2551 (2008), for the developers to use when selling a condominium unit. This was effective July 4, 2008.

Section 6/2: "[a]ny sale and purchase agreement between an owner of the land and building under Section 6 and a purchaser of a Unit shall comply with the form prescribed by the Minister. Any part of the sale and purchase agreement of the Unit under paragraph 1 which does not comply with such form prescribed by the Minister and is not in favour of the purchaser shall be invalid."

Any developer who fails to use the standard agreement specified by the Ministry of the Interior \_ and who thus violates Section 6/2 \_ may face a fine of up to 100,000 baht.

The standard agreement covers the following important terms and conditions for inclusion in the sale and purchase agreement, all of which are in favour of the purchaser:

- Developer's warranty that they are the owner of the land, and a statement regarding whether the land is mortgaged or under any obligation.
- Developer's warranty that a construction permit has been granted and the building will be registered as a condominium upon completion of construction.
- Common property and other facilities to be provided by the developer.
- Unit price and payment terms.
- Completion date of construction and the transfer of ownership registration date.
- Purchaser's right to assign its rights under the agreement to other persons without any additional expenses or assignment fees claimed by the developer.
- Developer's use of standard materials and equipment for the building and unit, and the developer's compliance with the approved construction plans.
- Maximum of one year's suspension of construction in case of force majeure.
- Developer's obligations to install utility meters (electricity and water supply).
- Developer's obligation to be responsible for its income tax, specific business tax, and half of the registration fee.
- Maximum default interest rate of 15% per year in the event the purchaser defaults on payment of the purchase price, with the total amount not exceeding 10% of the purchase price.
- Developer's obligation to return all money to the purchaser at the default interest rate (same as the purchaser's) and any further claims of damages or the possibility of a daily fine for developer, in the event the developer is unable to transfer the unit to the purchaser within the specified time.
- Developer's obligation to return all money paid by the purchaser plus interest equivalent to the highest fixed-deposit rate of Krung Thai Bank Plc, in the event the developer cannot continue the project due to force majeure.
- Developer's liability of five years for defects in structures and equipment and two years for other component parts.

Before entering into any agreement to purchase a condominium, the purchaser should ensure that, at a minimum, the above terms and conditions are contained in the standard agreement. This will protect the purchaser in the event the developer defaults or breaches the terms of the agreement. If other terms and conditions will be contained in the standard agreement, such must be in favour of the purchaser in order to be valid under Thai law.