

## Buying a house in a land development project: Look before you leap

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Recently, consumer interest in purchasing residential homes in Thailand has skyrocketed. In response to this, developers have launched numerous residential development projects catering to both domestic and foreign purchasers. Consumers now have the opportunity to contemplate purchasing homes of varying quality while also factoring in developer reputation and risk. When thinking about buying a home in a land development project, there are a few major issues buyers should consider both before and after making the purchase.

- Is the project protected under Thailand's Land Development Act?

Under Section 4 of the Land Development Act of 2000, "land development" means the sale of land divided into sub-lots from one main lot of land or from several lots of adjoining land in return for property or benefit as remuneration if at least 10 sub-lots are sold. This includes projects where the land is divided into fewer than 10 sub-lots but subsequent divisions are made within three years, resulting in the combined land being at least 10 lots.

Buyers should note that a developer might seek to avoid compliance with the Act by dividing the land into less than 10 sub-lots, so that the project may not have to provide public facilities or services, such as roads, parks or children's playgrounds.

- Is the project being completed as described in the contract or as in the developer's advertising materials?

Advertisements purporting to provide services or public facilities are regarded as contractual obligations between the buyer and the developer (Section 11 of the Consumer Case Procedure Act of 2008). Therefore, the land developer must fulfil promises made in the house sale advertisements, as they are contractual terms.

Furthermore, the land developer must request a bank or financial institution to conclude a guarantee with the Land Development Commission. If the land developer fails to provide for public facilities or services, the bank or financial institution will pay the commission the amount specified in the guarantee, so the commission can spend it on the provision of those public facilities or services (Section 24 of the Land Development Act).

- How will the public facilities or services be maintained both during and after purchase?

Sometimes, after developing a project a land developer fails to maintain public facilities or services in good working condition. Thai law provides that buyers of at least half the sub-lots under a project can pass a resolution to establish a developed-estate juristic entity, which is registered with the land official and controlled by an executive committee and the buyers. The management of public facilities or services can then be transferred to this developed-estate juristic entity (Section 44 and 45 of the Land Development Act) to ensure they are maintained effectively.

- Will there be any issues related to the collection of common fees?

Once the developed-estate juristic entity is established, all buyers of the developed land become members. If there are any sub-lots that have not yet been sold or which are transferred back to the land developer, the land developer becomes a member of the developed-estate juristic entity (Section 47 the Land Development Act).

Buyers of developed land are liable to pay common fees for the management and maintenance of public facilities or services, and land developers are liable to pay common fees for sub-lots that have not been sold (Section 49 of the Land Development Act).

To enforce contractual obligations in case of default, the developed-estate juristic entity can file a civil claim against a buyer or land developer who fails to pay the common fees.

- What will happen if there are manufacturing defects?

If defects are found before the transfer of ownership, the buyer should submit a written objection (preferably acknowledged by the developer or its representative's signature) outlining the list of defects (with photos) and requesting the land developer to repair the defects within the prescribed contractual period. If the land developer fails to repair the defects or does so inadequately, then on or before the transfer date, the buyer should present objections and supporting evidence of those defects to the land officer, informing the officer that the transfer cannot proceed unless and until the defects have been fixed.

If the defects are discovered after ownership transfer, the land developer is likely contractually liable. Exceptions include: (1) if the buyer knew or would have known of the defects at the time of sale; (2) if the defects appear at the time of delivery and the buyer accepts the house without objection; and (3) if the house was sold by public auction. The law allows buyers to take action concerning liability for defects within one year from the date the defects are discovered (Sections 472, 473, and 474 of the Civil and Commercial Code).

- What are the key steps before making a purchase?

Before buying a house in a land development project, buyers should study the project and the environment to determine whether the government has any plan to use the land or adjacent land or if the land could be subject to expropriation such as for future transport projects.

Buyers should review the corporate land developer by considering its previous projects and its corporate and financial status. Buyers can also conduct due diligence on the developer's authorised directors to determine whether they have the authority to sign the sale and purchase contract. This may include investigating whether the developer or its directors have been involved in previous consumer claims.

Finally, buyers should examine the land and the relevant title deeds and prior title rights to confirm whether the developer owns the land or has the right to use it with no risk of encumbrance.