



Risks of off-the-plan property purchases in NSW

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Purchasing property off-the-plan in New South Wales can be an exciting venture, offering the prospect of a modern and customised living space. However, off-the-plan developments also contain potential pitfalls and risks that property purchasers need to be aware of.

Case study: Laneways Rosebery, Sydney

The ABC news article (in July 2023), "[Laneways Rosebery, Sydney: Empty After Unmet Rectification Orders](#)", illustrates the potential issues that off-the-plan buyers may face when the finished building does not meet their initial expectations.

The case in question reveals that numerous buyers were left disappointed when the building failed to comply with certain quality standards and required rectification works. This left the development largely empty, causing significant financial and emotional distress to the affected purchasers.

Key issues faced by off-the-plan buyers

Quality and workmanship of the build

One of the primary concerns for off-the-plan buyers is the quality of construction and workmanship. An off-the-plan contract is usually entered into before development has commenced or before the building has been finished.

The quality and workmanship of the development often cannot be known until months or years after the contract has been entered into, at which time the buyer typically has limited ability to object to the quality or to exit the contract. The final product may differ from initial expectations when committing yourself to the purchase.

When the final product deviates significantly from the promised specifications or contains defects, buyers may find themselves bound to purchase a property that does not align with their original expectations. The price on the contract will not change, but the quality of the building may be worth less than the price that must be paid.

Finance considerations when buying off-the-plan

An exchange of contracts for the purchase of an off-the-plan property (the time that the buyer is locked into purchasing the property) typically occurs a long time before settlement, which is the time that the balance of the purchase price is paid. The purchase price is locked in at the time of exchange, but the timing of finance will occur closer to settlement.

If a buyer needs to sell assets to fund the purchase, then they could either be stung by market fluctuations or benefit from market gains. If the value of property that needs to be sold drops significantly, then the ability to finance the purchase may be more difficult than originally thought.

Alternately, if the buyer intends to obtain finance for the purchase, then they may not be able to obtain finance approval until closer to the anticipated date of completion. If circumstances change that impact their ability to obtain finance, then there is a risk that they would have insufficient borrowing power to be able to complete the purchase.

Compliance and safety issues can cause delays in off-the-plan purchases

Developers are obligated to adhere to building codes and safety standards in the course of property development. If the completed building fails to meet these requirements, it can create potential safety hazards for residents.

If any defects with the building are identified by engineers and certifiers prior to an occupation certificate being issued, it can result in the developer being required to undertake rectification works before an occupation certificate will be obtained. As an occupation certificate is a condition of settlement in off-the-plan contracts, the developer's delays in obtaining an occupation certificate can result in delays to the settlement of the transaction beyond the originally expected timeframe.

If an occupation certificate has been issued, then a purchaser may have already completed the purchase before building defects are identified. Depending on the nature of the defects, the

purchasers of the building may be exposed to legal and financial risks requiring action to be pursued against the developer.

Delayed completion and occupancy

Construction delays are not uncommon in the property development industry. For off-the-plan buyers, these delays can lead to financial strain due to prolonged waiting periods before the property is ready for occupancy, during which time they will need to arrange alternate accommodation. Delays may also affect the viability of the property as an investment and limit the purchaser's ability to earn income on the property.

Off-the-plan contracts will typically have a sunset date, being a deadline that would usually allow a purchaser to rescind a contract and reclaim their deposit if the development has not been completed. This sunset date is often years after the date of the contract, and while it may allow the deposit to be recovered, it can result in frustrations as the intended purchase can no longer proceed.

Timing of settlement for off-the-plan purchases

Settlement of an off-the-plan purchase is usually dependent upon following the pre-conditions (subject to the terms of the contract):

1. construction of the building;
2. subdivision of the development land and registration of the strata plan; and
3. issuing of an Occupation Certificate.

The timing of completion of these items can be uncertain, and delays can occur.

A contract will usually include a sunset date, which is a final date by which the vendor can complete these pre-conditions. If the sunset date is reached without the preconditions being satisfied, then the buyer or vendor may be entitled to rescind (end) the contract (again, subject to the terms of the contract and also the *Conveyancing Act*).

Many contracts will also allow the vendor to extend the sunset date if they are delayed in their development.

The consequence of this is that a buyer may not have certainty as to when the property will be available, which can be difficult to manage if alternate accommodation or financing is required.

Changes to the proposed development following exchange

The contract may allow the vendor to amend aspects of the building development from what was originally understood. The contract would usually provide what right (if any) a purchaser may have if the vendor makes changes to the proposed development.

Conclusion

Purchasing off-the-plan property in NSW can be a rewarding investment, but it comes with inherent risks. The Laneways Rosebery case highlights the importance of due diligence before entering into such agreements. Prospective buyers should seek legal advice, carefully review contracts, and conduct thorough research on developers and their past projects.

How can a property lawyer help?

At E&A Lawyers, our property team has extensive experience in matters with off-the-plan purchases and can assist you in preparing this every step of the way.

Contacting E&A Lawyers

For more information or to arrange a consultation with a lawyer, you can call or email us.

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