

## **Know Your Rights Before Purchasing Your First House from a Real Estate Developer in Peninsular Malaysia**

Purchasing your first property is an exciting milestone, but it comes with significant financial commitments and responsibilities. To safeguard your entitlement under the law, it's crucial to be aware of your rights as a buyer. This article provides an overview of the essential rights that every first-time property buyer in Malaysia should know when dealing with real estate developers.

### **1. Right to Information**

It's unsurprising to learn that many first time buyers are clueless on what information to ask when approaching the developer.

Firstly, you should check whether the developer has an approved Advertising Permit and Developer's License (APDL) issued by the Ministry of Housing and Local Government (Ministry). The Ministry monitors the developer's conduct and development activities, including its building plan, advertisement, selling price, projected completion date, land tenure and others. With this, you have greater assurance that your purchase is secured and not being conned by false marketing and dodgy developers.

Secondly, the land tenure whether it is freehold or leasehold. You must have heard of 99 years leasehold land property. If it is so, the property is subject to restriction of interest, that a state's consent to transfer is required for any future dealings and with additional cost incurred. If you are selling the property in future, the disposal period generally takes longer than selling a freehold property.

Thirdly, the type of the property whether it is a stratified or non-stratified (individual title) property. A landed and high rise stratified property attracts monthly maintenance fees and sinking funds to upkeep the shared facilities and services, like, gardening, refuse collection, swimming pool, lift and others. For high rise property, there's an additional mandatory annual fire insurance for common areas, such as corridor, lift, lobby and others. When considering purchasing a stratified property, it's essential to be aware that it comes with higher monthly maintenance costs.

### **2. Right to Standard HDA's SPA**

When you decide to buy an "under construction property" directly with the developer, it's imperative to note that our Ministry has mandated the adoption of a standardize Sale and Purchase Agreement (SPA) under the Housing Development Act. The intention is to protect the interest of buyers such as the agreed completion period of the property (delivery of vacant possession), warranty (defects liability period) and others.

You're entitled to request a digital copy of the SPA to review before signing the SPA. It is advisable to verify the building plan that is attached in the SPA to avoid discrepancies from the offer. If the SPA deviates from the standardize SPA, it should raise concerns on the legitimacy of the property transaction.

### **3. Right to Payment Schedule**

If the property is under construction, the payment of the property's purchase price is progressive based on each stage of the architect's certificate.

Upon completion of each construction stage, you should also be provided with a developer's billing accompanied by an architect's certificate confirming that the stage has been physically completed in compliance with the legal requirements.

The payment schedule also indicates that you'll only be responsible for the loan interest on the progress loan during the construction phase, and your monthly loan installments will commence after the entire progress payment is released. If you have strong cash flow in hand, you may want to explore the option of making progressive payments with your own cash funds within the specified timeline.

#### **4. Right to Cost to be borne by the Developer**

You might be curious about why some individuals label these expenses as "hidden costs." These transactions related to the SPA, loan financing, registration of title (Memorandum of Transfer), and registration of charge (Memorandum of Charge) involve stamp duty, legal fees, and disbursements.

These costs are not explicitly outlined in the standardized SPA and in fact, it's stated in the SPA that all costs are to be paid by the purchaser unless otherwise stated in the Developer's side letter. It's not a norm that MOT's fees are to be paid by the purchaser hence you should find out the fees to be borne by the developer to be ready to pay future expenses.

#### **5. Right to Project Completion**

This is usually called the Delivery of Vacant Possession, also known as the keys. You definitely wouldn't want the keys to be delayed as promised. Although it is often the case of a verbal promise made by the developer before signing the booking form/offer to purchase, the same should be stated in the SPA, either 24 months or 36 months from the date of the SPA.

Some projects may have an extension to the completion, for instance the mixed development of service apartment with commercial lots. The extended completion period should also be stated in the SPA

#### **6. Right to Warranty**

The beneficial part of purchasing an under-construction property directly from the developer is the defects liability period, often known as the warranty period. It is mandated by the law to provide a warranty period of at least 24 months from the date of the vacant possession notice.

During this time frame, the developer is legally obligated to address and rectify any defects or issues in the property. The warranty typically covers any defects or issues related to the construction, workmanship, or materials used in the property.

It's advisable for the buyer to conduct a thorough inspection of the property before taking possession and report any defects or issues immediately to the developer. If the developer fails to rectify it within 30 days, purchasers may repair themselves and deduct such cost from stakeholders sum, providing the purchaser has notified the developer of the cost of repairing by giving them an additional 14 days to rectify the matter. According to the House Buyer's Association (HBA), the purchaser may hire his own contractor and recover the repair costs from the developer's lawyer.

## **7. Right to National House Buyer Association**

The National House Buyer Association (HBA) is a non-governmental organization in Malaysia that advocates for the rights and interests of property buyers.

HBA provides support, guidance, and information to homebuyers, especially in dealing with issues related to late delivery of the vacant possession (keys) interest, defects liability period and others. HBA helps buyers file complaints against developers or other parties when issues arise during property transactions. They act as a mediator between buyers and developers to find amicable solutions.

HBA keeps an eye on the property market and reports any irregularities or unethical practices to relevant authorities.

## **8. Right to Developer's Separate Account for Payment of Purchase Price**

The right to a developer's separate account for payment of the purchase price ensures that the funds paid by buyers are securely held in a designated account, providing financial protection and transparency in property transactions.

This arrangement helps safeguard buyers' interests by preventing misuse of their payments and ensuring that the funds are allocated correctly towards the purchase of the property.

## **9. Right to Stamp Duty Exemption**

From time to time, the government promotes the purchase of property with free loan and/or MOT's stamp duty.

This exemption can significantly reduce the financial burden associated with certain legal or financial transactions, promoting affordability and ease of conducting business or property transactions. If you are purchasing your first property, subject to the entitlement period of the exemption, you could save a huge amount of money.

## **10. Right to EPF withdrawal**

Often used to settle the deposit sum, developers give flexibility in paying the deposit sum, generally with additional 30 days from signing of the Sale and Purchase Agreement. However, you are to ensure there is sufficient sum to be withdrawn from Account 2.