

Buying a New Build Property ‘Off-Plan’

When Should I Read This Leaflet?

This leaflet covers the situation where you are thinking of buying a property which has not yet been built, or is in the process of being but not finished (“New Build”).

In the current market, before instructing your solicitor to exchange contracts on your New Build, it is essential to fully appreciate the potential risks that you may be taking. This short leaflet explains why.

Exchanging contracts means that you enter into a legally binding contract with the seller to complete the purchase. You will not be able to rescind (get out of) the contract unless the other party fails to do what the contract says.

When you exchange, the completion date will be ‘On Notice’. This means that once the New Build is completed, the seller’s solicitor sends to your solicitor a notice to legally complete within 10 days (the date varies according to the contract). This means you will have to provide the balance of the purchase monies within this time frame.

Alternatively, you may be required to exchange with a ‘Longstop Completion Date’. This means that a date, in the future, is given for completion which will take into account how long it will take to build the property.

In today’s market there are a number of risks associated with completion being ‘On Notice’:-

A) Purchasing a New Building with a Mortgage

i) Expiry of Mortgage -

Mortgage offers are usually valid for up to 6 months. If you exchange contracts on a New Build and your mortgage offer expires prior to completion of the New Build you will need to get a new mortgage offer. You may find it difficult to get a new mortgage offer, particularly if your personal circumstances have changed, but yet you will still be obliged to complete,

ii) Valuation -

You may find that the mortgage company will be prepared to reissue a mortgage offer, but to do this they may require an up-to-date revaluation of the New Build. In this case you may be asked to

pay for the cost of this revaluation. Further, if the New Build is down-valued, you may have to find the difference in monies between the most recent mortgage valuation and the agreed purchase price.

B) Cash Buyers

House prices are very unstable. You may see the value of your investment go down as the House Builder reduces the price of the other units on the site because they are desperate to sell.

C) Insolvency of your House Builder

House builders have been severely affected by the current slow-down. You may find that after exchange of contracts, your house builder is unable to finish the development, and declares themselves insolvent.

In this situation, although you may be able to use NHBC Insurance to attempt to recover your deposit or force completion of the New Build, it could take a very long time to resolve your claim. In some circumstances, you may risk losing your entire deposit or only being able to recover part of it.

There can also be problems regarding completion of amenities such as roads, sewers, street lighting and play areas etc.

D) Redundancy

If you lose your job after having exchanged contracts, there is usually a standard clause in mortgage offers which states that if there is a change of financial circumstances you must inform your mortgage company. The result could be that the mortgage company withdraw their offer.

So What Happens if I Cannot or Will Not Complete?

If you do not complete you will be in breach of contract. This means that unless the House Builder is feeling very generous you will definitely lose the deposit you have paid.

The House Builder may also make a claim for:-

- i) the balance of the deposit (up to 10%) if you did not pay 10 % at exchange of contracts;
- ii) the difference in the price you paid and the price at which they managed to resell the property; and/or
- iii) the agreed full purchase price of the property;
- iv) interest and costs.

What Advice Can You Give To Me?

If you have weighed up all the options and still wish to buy a New Build, here are a few simple steps to take to reduce the above risks:-

Prior to Exchange

Do not instruct your solicitor to exchange contracts if you have any doubt about your financial circumstances, the solvency of the House Builder or the purchase price you have negotiated.

It is advisable only to exchange if the New Build is nearing completion. In these circumstances it is more likely that the New Build will be completed.

Exchange of Contracts

Opt for a Longstop Completion Date instead of On Notice Completion Date. This will mean that if the House Builder does not meet the completion date, they will be liable for breach of contract, and you can take action against them.

Post-Exchange

i) Monitor the progress of the New Build on the Development to ensure that it is progressing. If you become aware that work is slowing down, inform your solicitor immediately;

ii) Keep in contact with your solicitor and Mortgage Company to try to ensure your mortgage offer will be renewed;

NOTE: IT IS ESSENTIAL THAT YOU UNDERSTAND THE IMPORTANCE AND POTENTIAL LIABILITY/COSTS INVOLVED ONCE YOU HAVE EXCHANGED CONTRACTS.

If you have any queries on the points raised in this leaflet, please discuss them with your solicitor.

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