

## New Homes

### Buying off plan

By Marie Paynter

**Newly constructed property or buying 'off plan' is a specialist property area in itself because there are differences in the conveyancing process together with additional checks, searches, and documents that need to be considered.**

**Before you commit to buying off plan or a new home you should:**

- **find out all you can about the builders track record;**
- **visit previously completed developments, to assess how well they have aged; and**
- **ask owners about their experiences when they moved in.**

#### Definitions

**New Home** – A newly constructed Property which is being sold by the developer.

**Off Plan** – A Property that has not yet been built.

#### Advantages

Usually a new development will be advertised with estate agents and in the local press offering deals e.g. "free stamp duty". These special deals are certainly attractive, to both first time buyers, and investors. Incentives range from free carpets or white goods to offers to pay towards your deposit, and or legal fees. Some will even offer part exchange for your old home, so there would be no chain, but a swap instead.

The new house or flat will meet the latest building codes and energy efficiency standards, there is no onward chain, and perhaps best of all, no decorating!

Of course, paying for these perks is usually included in the asking price. Even so, the incentives can still be attractive, particularly to first time buyers and investors. An off plan property has in the past often increased in value from the point of purchase until actual completion.

#### The buying process

You visit the site office and its showroom to view the life like sample and various glossy brochures showing finishes and specifications which you could upgrade to.

To reserve a plot a reservation fee must be paid. You should be certain that this is the property for you, as from this point on, you will be spending money on the conveyancing and mortgage application process.

After instructing your Solicitor, confirm their details to the site office which will trigger the developer's solicitors to send over the contract pack.

The contract pack is usually substantial and contains most of the information required. On receipt, a strict timescale usually 28 days begins. If, for whatever reason, exchange of contracts is not achieved by this date then the developer can withdraw any incentives previously agreed. The developer could even go as far as deciding not to sell, and everything paid to date would be lost.

The contract documentation is in standard form and the developer's solicitors rarely accept any amendments. But it needs to be carefully checked for errors, and details of your specifications need to be inserted. The reason for the uniformity of the contract, is so the developer's solicitors can ensure that every property is sold on the same terms.

You should ensure that your mortgage offer has been produced before the 28 day deadline. Your solicitor will not normally exchange contracts without it, even though physical completion of the property might be months off. Check when the mortgage product and mortgage valuation expires. If completion has not occurred by then, you will need to seek an extension or pick a new mortgage product and pay for a fresh valuation.

## New Homes

### Buying off plan

Usually a developer's contract will state that completion will be on notice i.e. when the contracts are exchanged (when the transaction becomes legally binding) no fixed completion date is stated. This is because the property is not physically built or still needs to be finished. Once the property has reached practical completion, excluding any landscaping, the developers solicitors will serve notice on your solicitors calling for completion to take place usually within ten days. Completion must take place on that tenth day otherwise you will be in breach of contract and financial penalties will be incurred.

It is highly recommended that you inspect the property before and on the day of completion, to draw up a snagging list so that minor defects can be identified. There are professional snagging services offered by companies who have inspectors with experience in picking up on snagging issues and will create a list on your behalf, potentially saving you time and money. Some claim that these services can pay for themselves in that the money saved by ensuring the developer deals with minor defects outweighs the cost of service.

#### NHBC

All new residential properties must have the benefit of structural defects insurance, the most common being NHBC.

NHBC Build Mark Guarantee provides some cover until actual completion, and if your builder fails to complete the build, NHBC will reimburse monies paid to the builder. However, this only occurs if the builder is unable to return your funds to you e.g. as a result of insolvency. This is capped at either 10% of the original purchase price or £100,000.00 whichever is less.

Usually subsidence, heave and landslip are not covered by NHBC, so must be covered in your building's insurance policy. The builder's liability under NHBC is limited to the first two years after construction. Therefore a structural survey of the property may be desirable immediately prior to the end of that two year period.

During years 3-10 any defect or damage needs to be notified to NHBC directly and the cover includes:

- Foundations
- Load Bearing Walls
- Non-Load bearing partition walls
- Wet applied wall plaster
- External wall rendering and external vehicle tile hanging
- Load bearing parts of the roof
- Roof coverings
- Ceiling
- Load bearing parts of the floors
- Staircases and internal floor decking and screeds where these fail to support normal loads
- Retaining walls necessary for the structural stability of the house, bungalow, flat or maisonette its garage or other permanent outbuilding
- Double or triple glazing panes to external windows and doors (in converted properties they must be newly installed at the time of conversion)
- Below ground drainage for which you are responsible
- Defective chimneys and flues causing a danger to the health and safety of occupants

The financial limit to NHBC cover is the original purchase price to a maximum of either £1,000,000.00 for a newly built home or £500,000.00 for a converted home. The financial limit is increased each year in line with RICS House Rebuilding Cost Index or by 10% compound per year if less.

#### The Contract

The statements in the sales brochures are sales patter and will not be included in the contract. Therefore, if you are relying on something which you have been told verbally or that you have read somewhere, you should alert your Solicitor so this can be confirmed in writing by the developer's solicitor.

The law requires all the terms of a contract to be set out in writing and signed by all the parties. If you are purchasing above the standard specification or any extras then it is important that you advise your solicitor of these so that they are included in the contract.

New builds and off plan, developments need to be built in accordance with planning permission. All the planning permissions should be checked by your surveyor to ensure that the new home complies with planning permission and where relevant any conditions attached to the planning permission. If there are any reserved matters which require local authority consent, these shall be investigated and the position clarified before exchange of contracts.

The property will also need to be signed off for building regulations. This will either be part of the NHBC or will be done separately by an inspector from the local authority's building control department.

## New Homes Buying off plan

The developers contract will usually contain a disclaimer against any minor variations. (The size of the property and materials can change; any substituted materials chosen by the developer should be like for like, as far as possible).

Every property is unique and there are inevitable variations made during the build. The developers contract allows for this, stating that minor variations are allowed. The contract usually states that buyers cannot refuse to complete because of minor variations.

If, on the other hand, there are major variations e.g. some part of the property is not fit for purpose or a variation which results in a loss of value (evidence of which will need to be obtained), then you can refuse to complete on the grounds that the developer is in breach of contract. In refusing to complete your solicitor would serve a notice to complete on the developers solicitors. If the breach has not been resolved by the end of the notice period, then depending on the exact terms of your contract you may be able to recover your deposit.

It is recommended that a long stop completion date is agreed. This will ensure that you will be able to step out of the contract if completion cannot occur by the long stop completion date. Even the best developers can face difficulties on new builds and bad weather can have a big impact on timescales.

Long stop completion dates are usually a maximum of one and a half to two years from the date of exchange.

### Conclusion

In a falling market it may be hard to obtain a mortgage without a 10% deposit (or sometimes more), as valuations are completed on the basis the market is falling, and will continue to do so for the foreseeable future.

Where there are new build apartments/flats it may be an idea to try and discover how many are being sold to investors as opposed to home owners. If too many are sold to investors, the building could be saturated with empty flats. This has been the case where a substantial amount of new developments are constructed in a small area, causing more supply than demand.

Buying new homes off plan has been, and is likely to continue to be popular. An awareness of the deadlines, potential difficulties, and the buying process, will enable you to end up with the property and incentives that you want, and avoid costly mistakes.

**Our property solicitors are happy to discuss matters with you. For further information, please contact:**

**Marie Paynter** mp@lzwlaw.co.uk

**Andrew Weir** aw@lzwlaw.co.uk

**Alan Zeffertt** az@lzwlaw.co.uk