

Home Concepts – May 2005

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If what you saw is not what you get when you move into your apartment, then check your purchase agreement

For a tiny island, a slew of advertisements for new property developments appear everyday in the newspapers. And every weekend many upgraders and first time buyers plough through the classifieds pondering over the latest offerings of private and exclusive condominiums. Many are curious or intrigued enough to visit the show flats.

The last weekend, among the numerous advertisements, I noticed two enticing advertisements that claim to be located within easy reach of a particular MRT station, and an exquisite selection of finishes that include designer CARRE-HULSTA built-in wardrobes from Spain, HACKER kitchen from Germany, bath fittings and accessories from Italy, etc... Some others offer a full gym, swimming pool, BBQ facilities, driving range, a putting green, tennis courts, or what some developers refer to as full condominium facilities. Then there are those who offer wireless broadband internet facilities and some others, the state of the art modern hi-tech security. What many people may not know is that what they see in the colourful brochures and illustrations are nothing more than artist impressions. Even when you do decide to visit the showroom, what you see at the showroom may not be what you will get. If it is a very new development, all you may see is just the showroom or even a mock up. The developer may show you samples of finishings they will use in the unit you choose.

A friend of mine was shocked when he collected the keys to his new, swanky apartment in the East Coast. On arrival at the development, he was astounded to see that instead of a wall surrounding the development, there was only wire fencing. That was not all; the swimming pool was so small that all it took was four freestyle strokes to complete a lap. Furthermore, the marble that was supposed to be in the dining and living rooms of his flat was duller in lustre than the one that is used in the elevator. The flat was supposed to be 112sqm but he found to his dismay that 19sqm was taken up by the planter boxes outside his flat. The list of disappointments can go on and on.

At the end of the day, what you get will all be stated in the Sale and Purchase Agreement, which you signed with the developer. The agreement usually has two parts – the first section, a standard contract, that lists the conditions of sale, and the second section that outlines the varying details of the facilities and fittings within your flat and the development. It is not surprising that the details are usually rather scanty, or at best, general.

In the above example, my friend's agreement did state that high-quality imported marble flooring and a swimming pool would be provided but there was no mention of a boundary wall for the condominium and neither was he aware that the planter area was part of the purchase. And to top this unpleasant discovery off is that no fault can be attributed to the developer as they technically did provide a swimming pool and imported marble flooring. The lacklustre marble was imported from some Asian country and not from Italy as my friend had envisaged. For a case of breach of contract to be admissible in court, there must be irrefutable evidence that developer had not delivered what was stated in the contract. So, if the developer had promised a DE DIETRICH built-in appliance in the new unit, they should provide it. But then again, which DE DIETRICH built-in appliance were they referring to? The bottom line is that the developer's obligations are contractual and whatever that is not in the agreement could give rise to disputes later. (Please check this part for any factual errors that may have occurred in the editing process)

The important thing to bear in mind is that what you see at the showroom cannot be taken as a given. If you are going to believe that what you see in the showroom is what you will get, you will have to change that mindset as everything falls back on the Agreement.

If you were induced to enter into the agreements based on a statement of fact, represented by the developer or sales agent, that you would be getting a particular renowned brand of fixtures and appliances with the purchase of the unit and got another brand instead, this does not constitute a breach of contract. Although it may not be provided in the agreement, you could still have a case in that you could claim that there has been a misrepresentation, and that will allow you to commence legal action against the developer to either rescind the Agreement or claim damages.

The bottom-line however is that the agreement usually contains standard terms and if there is anything that is important which made you want to purchase the unit, you must read the agreement to ensure that the 1.5 X 1.5m round Jacuzzi they promised is in the agreement. The purchase of a property is probably the biggest investment for most of us, so it is advisable to spend some time to read the agreement. Seek the advice of a lawyer if in doubt but bear in mind that if it is not provided in the agreement, then this could give rise to a dispute. I remember when I purchased my apartment and the developer agreed to pay the stamp duty for the unit. This was not provided in the agreement but I managed to get the developer to sign a letter confirming that they would pay the stamp duty when it was due. Looking back, I wish I had asked them to confirm more details!

If, for whatever reason, you feel that a facility that you deem as pertinent is not stated in the agreement, bring it up to the developer before signing and ensure that it is included in detail in the Agreement. Otherwise, you could be in for a rude shock when you get the keys to your dream home.

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