

A guide to buying property off-plan

Property Power •



Find out everything you need to know about buying a new property from a developer.

Developers make use of two main ways to finance a new development:

- A developer may offer properties for sale “off plan”. The purchaser purchases the land and also enters into a building contract from the developer. As the construction progresses, the developer draws down funds from the purchaser’s building loan, after the purchaser has authorised such payment. This allows the purchaser some degree of control and ensures that the development progresses, otherwise the developer will not get paid.
- As an alternative, the developer may decide to build units without having signed any offers to purchase with purchasers. In essence, the developer is now speculating and hopes to sell all the units with the aim of making a profit.

The importance of having two sale agreements

You should sign two sale agreements when buying a freehold home "off-plan" or in a "plot-and-plan" development. One contract to purchase the land and the other to build the home itself.

The second agreement (with the builder or developer) should cover everything that is discussed and agreed upon with the person or company who is actually building the home - from the building price, the floor plan, the electrical wiring, the plumbing, the paint specifications, the fixtures and fittings, and so on.

Off-plan buyers are often not aware of the need for this second agreement, and the law only stipulates that the transfer of land cannot take place without a written contract. So, you may find yourself in a situation where you have a piece of land, but with no agreement for anyone to build a home on it.

Reputable estate agents working for developers or builders will thus always ensure that the sale agreements between buyers and builders are concluded in writing and in detail.

Advantages of buying property off-plan

Buying off plan is attractive if you want to own a new property and be the first to live in it. Most developments include all the costs involved so the price you see is the price you pay which is ideal as there are no surprises. All your legal costs may also be included in the package.

Another advantage to buying off plan is that the property requires minimal maintenance as everything is new and has not aged. In certain circumstances, you even get to choose your own finishes.

It is important to take care to read through the fine print on the contract as well as the possibility of building delays.

Risks and how to mitigate them

Before buying a home "off-plan" or buying a "plot-and-plan" home, there are important risks to consider. There may be various risks involved and this is how you can safeguard yourself:

Risk: The picture you have in mind (following the flashy brochure advertising the development) may not always be what the development turns out to be.

Solution: Find out what other developments were built by the developer/builder. Visit as many of these developments as possible. Try to view one or two of the units that may be on show. Talk to the owners and find out what their experiences were with the developer/builder.

Risk: Your new home may not be built in accordance with industry standards. The job may not be finished in time with the specified period, in order for you to take occupation. You may end up fighting lengthy, costly legal battles due to developer/builder cash flow problems.

Solution: Make sure that the developer/builder is a member of the National Home Builders Registration Council (NHBRC). The NHBRC was established through the Housing Consumer Protection Measures Act, 95 of 1998, to protect the buyer of newly built or still to be built residential properties, in the event that defective materials and/or construction methods are/have been used in the building process. It was also established to maintain construction quality standards in the home building industry.

If building work is not completed within the agreed time period or if it is found to be below industry standards with regards to plans, specifications, workmanship and materials, you need to take action within three months of taking occupation of the property. Roof leaks occurring within 12 months of occupation can be claimed for. In a case where serious structural defects are found, you are entitled, by law, to claim within five years of occupation.

You are also covered for compensation if the developer or builder is unable to complete the project or goes into liquidation.

Risk: There is a possibility that you could be sold short of the quality of finishes you initially signed for.

Solution: Specify all items in the contract, from kitchen and bathroom accessories to wall, lights and floor finishes and fittings. Be cautious of contracts containing clauses stating that prices are subject to fluctuations in the cost of materials. Make sure to understand exactly what you are agreeing to. It is always

advisable to have the contract checked by an attorney to make sure that you are covered with every aspect of the building process and that there are no loopholes.

Risk: You may be one of the first owners in the development to move in. You may be surrounded by the building operations of the rest of the uncompleted units for quite some time.

Solution: Make sure that you have measures in place from the beginning to provide for adequate privacy and security.

Risk: You will need to landscape your garden from scratch.

Solution: This is not always a disadvantage, because you now have the chance to develop your brand new garden into the style you prefer. If you have big dogs, it may be advisable to make sure that your grass is well established before you move in.

Also important to keep in mind:

- Look out for a clause in the sale agreement that obliges you to use a mortgage originator who has struck a deal with the developer. In this way you may bind yourself to a contract that enables the developer (or his mortgage originator) to apply for and negotiate a home loan on your behalf at any bank of his choice.
- Do not rely on the National Home Builders' Registration Council (NHBRC) for recourse against bad workmanship by a builder or developer. An NHBRC warranty certificate is only proof of enrolment with the NHBRC. It is not a guarantee of good workmanship, and it does not cover all building defects. It is valid for five years and after three months from the date of occupation it covers structural defects only.
- If you pay a deposit check the contract to make sure it is refundable. Some contracts stipulate that the deposit is not refundable.

Keep your finger on the pulse

When your property is completed and you have taken occupation you will have a certain time frame in which to supply the developer in writing with your unit's defects. This is known as a 'Snag List'. It is recommended to pay regular visits to the site during construction so that you can bring any problems you notice, as they arise, to the builder or developer's attention, and get them sorted out. In this way you can avoid any structural issues you may have.

Possible points you may want to look at when writing your Property Snag List:

- Check the plumbing for leaks;
- Check the taps in your baths, showers, basins and outside taps are not leaking and make sure they all match and are the fittings you chose;
- Make sure all bathroom accessories are there, i.e. toilet role holders, soap holders, towel railings, and so on;
- Make sure the kitchen and bathroom have silicon around the basins, baths, and so on;
- Make sure there are fittings for your washing machine and dishwasher;
- Make sure the oven and stove is working;
- Make sure the cupboards are properly installed and open and close correctly and are not damaged;
- Make sure there are no cracked windows;
- Open and close all doors and windows to ensure they all work correctly;
- Check all the locks on the [property](#) and make sure you have keys for all of them;
- Check the tiles for hairline cracks, a satisfactory grouting job and correctly (straight) laid;
- Make sure there is no lifting of any wooden floors, or warping of wooden doors and frames;
- Make sure light switches and plugs are working and covers are properly (straight) installed;
- Look at your walls to see if there are any cracks which need attention;
- Check all other fittings for damage and make sure they are the ones you ordered.

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