Liability for Construction Defects

Published in Samui-Phangan Real Estate Magazine, June 2011

By Fabian Doppler

In real estate acquisitions, in particular when it comes to new buildings, an important part of the process is managing issues related to construction defects. Such defects may range from small snags to major problems. From the legal point of view, the responsibility for the rectification of the defects stands in the foreground.

The defects warranty by the contractor (in the case of a construction agreement) or seller (in the case of a house sale and purchase agreement) includes an obligation to provide the building in a condition that was agreed upon in the contract between the parties, including exhibits such as copies of construction drawings, bill of quantities, etc. The warranty applies for a certain period of time, the defects liability period, which starts with the acceptance and handover of the building.

1. Delivery and acceptance of construction works

If defects of a new building are discovered at an early stage, before or upon delivery of the works, there are generally two options for the employer of construction works:

- The construction works are rejected and not accepted as complete, due to major defects and/or works that are not according to the contractual specifications.
- The construction works are accepted as complete, however a list of minor defects is submitted to the developer for rectification and repair. In this case, these defects would be considered notified and the defects liability period would stop running, i.e. the liability period would not be an issue anymore for the employer with regards to these defects.

It should be noted that the use of a house by the employer in principle can constitute an implied acceptance. An implied acceptance however requires that the purchaser’s actions create the impression that he really wants to accept the construction works as defect free.

2. Defects notice

If a defect is discovered after delivery and acceptance of the works, the developer, or seller respectively, should be notified immediately. Usually, the contract will set forth formal requirements of the notice which need to be observed, in many cases a specific and detailed procedure is stipulated in the contract. If the contract does not address this issue, the applicable Thai laws then need to be reviewed to determine the right procedure. Accordingly, the notification should be sent by registered mail and a reasonable time period should be given for rectification. The defects should be identified in a “defects list”.

The defects liability period is inhibited upon delivery of a formal notice. Therefore, the developer will still be liable for rectification of the defects if the notice period expires after delivery of the notice.

3. Defects liability period

Primary means to determine the duration of the liability period for defects is again the agreement between the parties and its specific terms and if it does not address the issue, pertinent Thai laws need to be reviewed.
For construction works, the rules for the hire of works according to Section 587 ff. of the Thai Civil and Commercial Code (“CCC”) apply. According to Section 601 CCC, no action against the contractor can be entered into later than one year after the defect appeared. According to Section 600 CCC, the contractor is liable for defects of a building (except wooden building) within only five years after delivery of the work. This is the maximum defects liability period from delivery, also in the case of hidden defects. The terms of Section 600 CCC only apply if the contract does not say otherwise.

Section 600 II CCC sets forth that no limitation shall apply if the contractor has concealed the defect.

For the purchase of an existing house, as opposed to the hire of construction works, Sections 472 ff. CCC, apply. No action for liability for defects can be entered into later than one year after discovery of the defect. It is however important to note that the defect must have existed at the time of delivery.

If the duration of the liability is reduced to an unduly short period, consumer protection laws may to be taken into consideration as well.

4. Liability period in case of purchase of a condominium unit

For the defects liability for units of a new condominium unit, specific rules apply. They are set forth in the Condominium Act and its respective regulations. An official template for condominium sale and purchase agreements, issued by the Ministry of Interior, sets forth a minimum defects liability period of two years for non-structural defects and five years for structural defects. These minimum requirements are compulsory and cannot be abrogated by agreement. Consequently, shorter defects liability periods would not be honored by a court and replaced by the minimum periods. The standard agreement further sets forth an obligation of the seller to remedy defects within a time period of 30 days. Please note that the aforementioned only applies for new freehold condominium units, not for resale transactions or apartment buildings without a condominium license or for leasehold interest in condominium units.

This article is for reference purposes only. FRANK Legal & Tax strongly advise that professional legal advice be sought before conducting any business in Thailand and disclaim any liability whatsoever for any damage caused by reliance on the contents of this article. All legal advice pertaining to Thai law is communicated in strict consultation with and given solely by licensed Thai attorneys.