

Purchaser Protection under the Thai Land Development Act

By Krongkarn Tiyatha, Fabian Doppler

It is a rather unknown fact among foreign property purchasers, in particular in tourist resort destinations in southern Thailand, that Thai property law sets forth a strict regime for development of real estate projects. One significant piece of legislation in this context is the **Land Development Act, B.E. 2543 (2000)** (hereinafter referred to as "**LDA**").

1. The "Development License"

The LDA requires any real estate development in Thailand comprising ten or more units to obtain a **development license**. This license will be granted if certain required standards are met by the project and it may contain detailed and specific conditions for the development of the project.

The LDA provides purchasers of property in Thailand with a certain minimum level of legal protection. In order to take the full advantage of this protection, prior to a property purchase from a licensed development, the development license should be compared with following important documents:

- a. the brochure and other marketing material provided by the developer (the land developer can advertise its project before obtaining the land development license from the Land Development Commission),
- b. the land and house purchase agreements and
- c. the development plan.

2. Specific procedure for legal disputes

In our experience, legal disputes frequently occur when a land developer breaches the contract and/or does not follow his own development plan. For this case the LDA provides protection for purchasers, if the correct legal procedure is considered. The LDA applies for both individuals and juristic persons. If there are any problems with a land developer, purchasers may file a **complaint with the Land Development Commission** in accordance with LDA Section 52.

This legal procedure is a very efficient means of dispute resolution.

3. The "Developed Estate Juristic Person"

From the beginning to the completion of a real estate development project, the LDA sets forth procedures related to the development of the land. For instance, the land developer has the responsibility to maintain public facilities and public services until the so-called "**Developed Estate Juristic Person**" has been established to take over the responsibility for the maintenance. We note that

- a. the public facilities provided by the land developer for the purposes of the land development in accordance with the approved map and project (such as the road, park or children playground) shall be subject to a **servitude** in the interest of each unit in the development. In this regard, the land developer shall have the duty to maintain such public facilities to be in the original condition and shall refrain from doing any act which may adversely affect the servitude or make it less

convenient.

- b. the land developer shall conduct **maintenance of the public facilities** in the project for a period of at least 1 year as from the date of completion of the construction of the public facilities within the project.
- c. the land developer shall cause a bank or a financial institution to conclude a guarantee with the Commission with regards to the maintenance of public facilities which have been provided by the land developer and remain within the responsibility of the land developer to maintain.
- d. according to LDA Section 41, the land developer shall be **discharged** from the duty to maintain the public facilities if the purchasers of developed land of not less than half of the sub-lots in the project map have established a developed estate juristic entity under the LDA (or a juristic person under other law for the purpose of taking the transfer of such property for its operation and maintenance) within the notice period specified by the land developer, which shall be not less than 180 days from the date of the receipt of the notification by the land developer. If the purchasers cannot establish a developed estate juristic entity on time, the land developer may
 - (1) *obtain an approval from the Commission to carry out any particular act for the purpose of maintaining the public facilities or*
 - (2) *register the transfer of such property to be a property for public use.*

According to LDA Section 44 (1), it is not allowed that the purchasers of developed land of not less than half of the sub-lots in the map under the project establish the developed estate juristic person while the land developer still has the responsibility of maintenance of public facilities. In case that the purchasers of developed land represent less than half of the sub-lots, they do not have the right to establish the developed juristic person in any event.

The purchasers should be aware that their right to establish the developed juristic person will permanently expire if they do not establish the developed juristic person on time. But it is highly recommended that the purchasers establish the developed juristic person to maintain the public facilities by themselves as it is very helpful and beneficial for their community.

The establishment of the developed juristic person by the purchasers has following legal effect:

- a. For the land developer:
 - Release from the duty to maintain the public facilities
 - He becomes a member of the juristic person for the unsold plots
- b. For the purchasers (both the agreeing and disagreeing voters):
 - They become members of the juristic person
- c. For the juristic person:
 - It has the legal status of a 'juristic person'
 - It has 'the juristic person committee' to act on its behalf according to the law;
 - The 'juristic person committee' represents the juristic person in dealings with third parties.

4. Mandatory terms and conditions of purchase contracts

The LDA interestingly stipulates very strict requirements for land and house purchase agreements between the land developer and purchasers. A house purchase agreement must be in accordance with the **standard contract prescribed by the LDA** in order to protect purchasers. There are two versions of this standard contract:

- a. For purchase of land with building and
- b. For purchase of only land.

Any terms and conditions of the contract that has actually been entered into between land developer and purchaser are deemed invalid if they are in contravention to the standard contract.

As part of the standard **due diligence** prior to the property acquisition, we further recommend a thorough review of the land title deed (and the title history according to the registry at the land office), building permit, construction agreement and invoices / receipts for payments to the land developer or contractor. In a professionally managed development all such documents should be in line with pertinent laws and available for review to the purchaser.

5. Legal framework for property purchaser protection in Thailand

It is important to note that the aforementioned protection by the LDA applies fully only in the case of outright purchases of property, not in the cases of long term leases, such as 30 year leases, which are frequently used to legally structure property acquisitions by foreigners.

However, further to the LDA there are various laws and procedures in place in Thailand that aim to protect the rights of real estate purchasers. For instance, according to the Consumer Protection Law B.E. 2541 (1998), a land developer may be held accountable for the information provided in marketing material. Furthermore, the Condominium Act, 1979, B.E. 2522 provides a standard condominium unit sale and purchase agreement which is comparable to the aforementioned standard contracts under the Land Development Act. And an Announcement of the Consumer Protection Board regarding Section 35 (2) Consumer Protection Act, dated as of 15 September 2000, stipulates detailed contract terms for condominium unit purchases.

This article is intended for general guidance only. It should not be relied upon as legal advice.
