

Buying a Property from a Developer: The Relevant Consumer Laws

The following statutory regulations govern the standard purchase/sale:

1. General requirements as per the Consumer's protection Act 1984. (Ley 26/1984 de 19 de Julio General para la defensa de los Consumidores y Usuarios)
2. General requirements as per the General Contractual Conditions Act 1998. (Ley 7/1998, de 13 de Abril, sobre Condiciones Generales de la Contratación).
3. Specific requirements of the Royal Decree 515/1989.
4. Spain's Building Act, Articles 19 & 20
5. Miscellaneous requirements as per other laws.

Points 1 & 2. The Consumers Protection Act 1984, extended by General Contractual Conditions Act 1998 has been designed to protect the rights of consumers.

Clauses and conditions in the purchase contract have to meet the following requirements:

- They must be clear, allowing terms and conditions to be directly understood, without reference to legal texts that are not provided prior or at the time of signing.
- They must be written in good faith with fair balance, and exclude clauses:
 1. Enable one of the parties to unilaterally rescind the contract
 2. Place the consumer in a position of detrimental imbalance with regards to the rights and obligations of the parties in the contract.
 3. Create unfair conditions of financing.
 4. Totally waiver the responsibility of the developer, with regards to the consumer, of those terms referring to the aim and utility of the product.
 5. Invert the rule of "burden of proof" to the detriment of the consumer.
 6. Declare a refusal, by the developer, to render "typical services" of the product or service.
 7. Waiver the rights and defenses of the consumer under this Act.
 8. Obligate the consumer to bear the costs of services and products that should be borne by the developer e.g. declaration of New Works, Horizontal Division and costs of existing mortgage loans, etc.

For the purposes of this Act any uncertainty or doubt in any of the conditions, clauses and stipulations will be interpreted to the detriment of the drafter. This clause is also extended to include specific clauses privately negotiated by the parties and inserted in the contract. Any condition, clause and stipulation which contradict the above requirements are considered to be null and void and will be deemed as never having been inserted.

Point 3. The Royal Decree

Under the Royal decree, there are a number of specific requirements which are mandatory in the purchase-sale contract of a developer. These are as follows:

1. Name, domicile and where applicable, registration details of the developer in the Mercantile Registry.
2. Plan of location of the property and plan of the unit itself, together with a detailed description of the electricity, water, gas and heating/air-conditioning systems, and fire prevention devices installed in the unit.
3. Extensions of the property, and reference to the building where the unit is located, the common areas and accessory services.
4. Reference to the materials used in the construction of the unit, including heating and sound proofing, and materials of the building where the unit is located, common areas and accessory services.
5. Instructions of the use and maintenance of the general installations which require special knowledge handling and also instructions relating to action to be taken in case of emergency.
6. Details of registration of the building in the Land Registry.
7. Price of the property, accessory services and form of payment.

Point 4. The requirements of articles 19 and 20 of Spain's Building Act.

Article 19 stipulates that the developer and the contractor have to take out three insurance policies, covering:

1. Minor defects affecting finishings or final details for the first year after completion.
2. Damage to constructive elements and habitability conditions for the first three years.
3. Serious damage to foundations, beams, pillars and any other element directly compromising the mechanical resistance and stability of the building covering 10 years.

The building contractor will take out the insurance on point 1 and the developer on points 2 and 3. The policy beneficiaries will be the developer and any subsequent purchaser of the property.

Article 20 stipulates that no public deed of new works will be authorised or registered in the Land Registry unless the guarantees contemplated in article 19 have been provided.

Point 5. Miscellaneous requirements as per other laws:

- Copy of the authorisation and building licenses necessary for commencing the works, certification from the relevant authorities regarding town-planning, with special reference to permit to the division and compensation operations of the plot where the property is being built.
- Statutes and by-laws of the Community of proprietors, where applicable, and information regarding community services and supplies. Where the Community is operating, an up-to-date statement of accounts.
- Information regarding taxes levied on the property paid or to be paid.

Final points when considering off plan

If you are assuming the mortgage existing on the property direct from the developer, the contract should mention that if you decide not to subrogate the mortgage, the costs of cancellation will be entirely borne by the vendor/developer.

Although the existing legislation does not envisage these costs, check that the Notary Public costs which arise when you complete are to be paid according to the provisions of the Spanish Civil Code and that the plus valia tax is also paid by the vendor, since according to the law it is their cost. This clause is very rarely contended by purchasers given they are usually unaware of this protection granted by consumer laws.