

ABSTRACT

Thesis title : The Legal Measures to Protect Buyers of
Real Estate from the Real Estate
Developers

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The legal measures to protect buyers of real estate, rose from the needs of the people for shelter. To meet this demand numerous people became real estate developers. Subsequently, the government enacted legal measures to protect the people (i.e. Revolutionary Committee Announcement No.286 dated 24 November 1972, B.E. 2515, which is the legal measure designed to protect the purchaser from such developers), to force real estate developers to comply with the laws.

The objectives of this thesis, based upon the results of the research obtained, are to study the operation

of real estate development according to Revolutionary Committee Announcement No.286 dated 24 November 1972, B.E. 2515, and the measures used to protect the buyers of real estate from the developers, and to further study the legal sanctions imposed, in order to propose recommendations for the improvement of the law. This thesis is strictly based upon documentary research.

From an examination of the results of the research, it was discovered that rules to protect the purchasers in the Revolutionary Committee Announcement were available, but in practice there were still loopholes used by those who wanted to partition their land, contrary to the law, into numerous plots without obtaining proper authorization to develop the real estate, and that the legal sanctions for the protection of the buyer, were in practice, insufficient. For example, under current interpretation of the law, to evade the application for the authorization to develop the real estate, the counting of the number of plots to be developed, for the purpose of determining the necessity of obtaining authorization at any particular real estate development, does not look at the real intent of the developer, or even ensure that he pursues the continuity of the whole project, but in fact, the law

only evaluates what are the developers stated intentions. Therefore developers seeking to evade the law can subdivide the housing project into plots numbering less than the legal limit (10) to evade the law, and then resubdivide those plots again into equally small numbers, until he reaches the amount of plots he originally desired, but did not legally express, thus avoiding the scrutiny of the law.

In addition, in the developers' advertisements, it has been found that the intent of the Consumer Protection Act, B.E. 2522, has not been complied with as a result the buyers do not have the correct information regarding the real estate, or have a mistaken understanding, because the advertisements do not give the correct information. Furthermore, the buyer may not have sufficient information before to make an informed decision to purchase the real estate, and the research shows that the legal measures regarding after sale service concerning the utilities, according to article 30 of the Revolutionary Committee Announcement, provide the opportunity for the developer to transfer such responsibility to local administrative agencies (i.e. municipal authorities, public utilities...). The willingness of the local administrative entities to

accept responsibility for such developments is often lacking, because their resources are small and they therefore are unprepared to accept responsibility.

Therefore, the researcher is hereby of the opinion that, the government should amend the Revolutionary Committee Announcement No. 286 date 1972, B.E. 2515, to prevent the evasion of the authorization for real estate development, and to promote a clearer interpretation in order to protect the buyers both before and after the sale. With respect to the collection of the down payment for the house and land, the escrow system should be employed, so that the buyers obtain greater protection for their money. Regarding the after sales service and the allocation of the rights and duties of different parties, the juristic private commonly owned housing system should be employed, and the agreement to buy and sale, and any other related contracts of this business should be standardized and employed exclusively, in order to prevent problems which may occur otherwise. In addition, the provisions of the unconscionable contract bill should be employed to enable the buyer to obtain fair treatment.

There are numerous issues which need to be addressed :

1. the lack of clarity with respect to the subject

matter of the contract for reservation of a particular house, the agreement to buy and sell and other related contracts,

2. the matter of false and ambiguous advertising, which may mislead the buyer,

3. the establishment of a consumer protection organization to control and supervise,

4. the dissemination of news and information to the buyers,

5. the need to cut down on the amount of bureaucracy to prevent the evasion of the law,

6. there should also be a decentralization of the land office authority to branch offices, so that the authorization of the development can be approved at the local land office,

7. in addition, there should be the enactment of new legislation to force banks to withhold financial support from developers who fail to comply with the law, doing otherwise should incur criminal and civil liability on the part of the developer,

8. furthermore, there should be zoning for the land development according to the City Planning Act B.E. 2518,

as amended B.E. 2535,

9. and there should be measures to handle the after sale service in the area of the maintenance of public utilities to meet the required standards,

The government should implement the abovementioned rules by amending the Revolutionary Committee Announcement, and provide appropriate penalties, so that it shall be better able to protect the rights of the buyers, and be better able to sanction developers, to a certain degree.

The results of this study enable us to understand the legal measures of the government, for the protection of the buyers of real estate from real estate developers, and the problems which originated from the abuse of these legal measures by the developers of said real estate. Therefore, this study shall provide the means to improve the relevant legal measures for the benefit of the buyer, the real estate developer and for the peacefulness of society as a whole.