

# **French Law Is Well Endowed With Consumer Protection Laws**

## **Contract Documentation**

The contract is a comprehensive document that must contain a full description and plans of the proposed dwelling and its precise location . It must also include a technical description of the materials and equipment used in the construction, and list the communal facilities and their conditions of use. This document is called the «notice descriptive»

You will be provided with your own copy of the full technical supporting documentation («descriptif détaillé»). Nevertheless, you are entitled to consult the documentation at any time, and it forms part of the contract.

When the property has been completed you need to be able to compare any difference between the property shown on the plan and the actual realisation. Indeed, the law states that if you are not given this information (or the right of access to it), then the contract is capable of being annulled.

The developer is also obliged to provide you with the set of the rules that will apply on the development, e.g. use of the communal areas, business use of the property, service charges.

This document is called the «cahier des charges» and it is important you read and understand it.

The contract will be in French and you will receive a full legal translation.

The contract will grant the purchaser some choice about colours and fittings etc. from a catalogue supplied by the developer.

## **Price**

The share/contract will be given for a fixed price.

## **Delivery Date**

The contract will state the quarter of the year of completion. The law prescribes specific penalties for a developer who does not deliver a property by the due date. Delays caused by “force majeure” – i.e. very bad weather; will be taken into account.

Fortunately, delays in the completion of new off-plan developments is uncommon.

You are entitled to withdraw from the contract and receive full reimbursement, if there is an unreasonable and substantial delay.

Only a court of law could determine what might be reasonable in the circumstances, but the general principle the courts operate is that delay is not generally a sufficient reason to withdraw from the contract. You may well be awarded 'damages' if you suffered injury as a result of the delay, but you would not be awarded 'penalties', unless you had a suitable clause in the contract.

## **Guarantees**

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### **Financial Guarantees**

Under the terms of the contract the developer is obliged to provide a bond or financial guarantee that secures completion of the dwelling in the event of bankruptcy or liquidation of the business or failure to complete.

The guarantee is arranged via a bank or insurance company and takes the form of either a «garantie de remboursement» or a «garantie d'achèvement».

The «garantie de remboursement» provides for reimbursement of all sums paid by the purchaser in the event of default by the developer before works have started on site.

Thus, where the developer is seeking planning permission that does not arise in time, or does not start on site on the due date, the contract can be terminated by the purchaser.

This guarantee ensures all sums paid are reimbursed.

The developer has no discretion but to take out «garantie d'achèvement», which guarantees completion of the building works where the builder becomes bankrupt or otherwise fails to complete the building on time or to the agreed price.

Both of these guarantees are expensive and some developers actually use both in order to reduce costs, i.e. a «garantie de remboursement» at the early stages when payments are low and the «garantie d'achèvement» in the latter stages when there is less to complete.

### **Building Guarantees**

Under the terms of a contract, the developer is under an obligation to remedy any defects in the property that arise within the first year following handover of the property. In addition to this one year contractual guarantee, the developer is also required to give a ten

year statutory building guarantee on the property.

The first year of this ten year guarantee runs co-coterminously with the one year guarantee.

In strict legal terms, if the developer is not also the builder, the ten year building guarantee is between the developer and the builder, to the benefit of the purchaser. The responsibility is referred to as «la responsabilité décennale» and operates on a reducing basis, with minor work guaranteed for a year and more major building work guaranteed for the full period.

In order to improve the enforceability of this rule, and reduce litigation between client and developer, the law requires separate client insurance is also taken out. The client insurance is called «assurance dommages-ouvrage».

The policy provides a similar ten year guarantee against defects in the workmanship in the event of default by the developer.

### **Developers Building Guarantee**

The ten year building guarantee from the developer/builder operates through an insurance policy they are required by law to take out. This insurance policy is called the «assurance décennale». There are severe penalties for a developer/builder who does not carry this insurance cover. The ten year guarantee operates on a tiered basis as follows:

- i.** During first year from completion the developer is obligated to guarantee complete performance of the work - «la garantie de parfait achèvement».
- ii.** During second year to guarantee that fittings are in good working order, e.g. electrics, sanitary goods, heating, windows, shutters, and doors – «la garantie de bon fonctionnement».
- iii.** During the ten years from completion to guarantee all those works concerned with the stability and integrity of the building including those elements which ensure the building is wind and watertight, e.g. foundations, floors, walls, staircase, ceilings, door and window frames, major electrical and plumbing defects, roof, framework – «l'assurance décennale».

Where a defect arises the client is not obliged to prove the fault and the developer/builder is presumed to be responsible. The developer/builder can, however, escape liability on grounds of force majeure (event not foreseeable, irresistible and external).

Most importantly, beyond the first two years, the ten year guarantee does not cover defects in building products or equipment installed in the property. It only covers the workmanship of the contractor.

Accordingly, if, for instance, your boiler ceases to function after five years, you cannot go back on the builder, unless the cause of the failure was their installation work. If the builder was not at fault, you would need to examine the manufacturers' guarantee. There is also a guarantee that the property complies with current noise insulation standards – «la garantie de l'isolation phonique». This guarantee operates separately from the «assurance décennale» for the first year following handover, to the benefit of the first occupant of the property.

Moreover, in a recent judgement, the French Court of Appeal took the view that, even should a property comply with current noise insulation standards, if there remains a noise problem that can be objectively identified, then it is still possible to draw upon the ten year guarantee to seek redress. It will, as always, depend on the circumstances. Quite apart from the ten year guarantee on defects, there is also a right to bring a legal action against the developer for up to 30 years, if the property does not conform with the specification as set out in the sale contract.

So the 30 year rule does not cover 'defects' per se, but a lack of correspondence between the specification and the end product. There is a lot of litigation on this whole issue and the distinction can only finally be determined by a court of law.

### **Householder Defects Insurance**

The purpose of the «assurance dommages-ouvrage» is to ensure, as far as possible, that you are satisfactorily protected in the event that the developer, or their insurance company, does not accept liability under the ten year building guarantee. In these circumstances it might take you years to obtain redress, even if you are ever able to do so. The policy seeks to remove all of this uncertainty by placing an obligation on your insurer to meet the costs of remedying the defect, and leaving it to them to fight the battle as to who is responsible.

### **Payments**

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Under the terms of the contract you will be required to make stage payments to the developer.

The schedule is referred to as «l'échelonnement du paiement du prix» The payments will be a percentage of the total purchase price, which will vary depending on whether it is an apartment or a house.

## **5.1. Handover & Delivery**

Accordingly, there is a formal and legal handover of the property between the developer and the owner. You will receive a written report on delivery, which is called a «procès verbal de livraison».

You may take “delivery” yourself – or can appoint another person or management company or Hussier, (court bailiff). A full delivery inspection of the property is essential.