

I bought a house off the plans in a new development and paid a deposit to the builder. The property isn't fully completed but the builder has now gone into liquidation. What legal recourse do I have against the builder to recoup the deposit?

Response

Payments of deposits to a builder or a builder's solicitor have always been a cause of concern to purchasers and their solicitor.

It has generally been accepted that the builder is entitled to receive the deposit and finance the development. It is important to note that, when a deposit is paid to the builder's solicitor, it must be paid over to the builder and taken into the builder's cash flow. As such, if deposits are handed over before a contract is entered into, the purchaser ranks as an unsecured creditor if the builder becomes insolvent.

Most builders borrow large amounts to buy development land. This is financed by way of a mortgage/fixed legal charge in favour of a bank which will rank as a secured creditor in an insolvency, so its debt will be given priority. Therefore, a deposit can be at risk until formal contracts are executed unless the deposit is ``subject to contract''.

Deposits should not be paid directly to a builder unless the builder is guaranteed under the National House Builders Guarantee Scheme (also known as the Homebond scheme). This scheme provides cover for loss of deposit if the builder becomes insolvent.

To ensure protection under this scheme, the deposit cheque should be made payable to the party registered under the Homebond scheme, and a receipt should be obtained.

If paid to an agent, the purchaser should get written confirmation from the builder's solicitor that the money is paid to the registered party.

If the builder is not registered with Homebond, the deposit should be paid to solicitors for the vendors pending completion of the sale.

The availability of Homebond protection is limited to money paid by the policyholder to the developer after the effective date stated on the certificate of insurance, and covers up to half of the agreed contract price or €100,000, **whichever is less**.

If it appears that the total claims anticipated and paid in respect of any one developer may exceed a €2 million limit, Homebond may, at its discretion, reduce individual claims from all affected policy holders by the proportion by which anticipated and paid claims are estimated to exceed the €2million indemnity.

- If a deposit is paid over to a builder that is not registered with Homebond, it is unlikely that the deposit will be recovered, unless it is subject to a specific contract.

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