

Buying from a Housebuilder

By Ian C Ferguson

Weary of bidding “offers over” for houses? Fed up with facing a closing date where effectively you play a poker game bidding blind with other offerors? Then buying a new house from a builder can be an attractive proposition for some buyers.

Why?

There is usually a fixed price. Incentives like carpets, curtains and white goods or fees thrown in are common. Of course the truth is you still pay for these things. The price will take account of it and your surveyor is likely to take these extras in to the equation when assessing the house value.

Most builders have a set standard form missive (i.e.contract) for the purchase which sets out the conditions under which the purchaser will offer and send it to the purchaser’s solicitors for their clients to sign. Although the purchaser is separately represented by his own solicitor, builders make clear they will not accept amendments or are certainly reluctant to accept amendments.

From experience there are some amendments that I have found some builders accept in practice. To avoid liability for a delay in completing a house typically the builder will provide that the date of entry, when the price is payable, is 7 days after the house has been passed as complete by the Local Authority. It is not usually possible to amend that formula as such. However it is sometimes possible to provide that the date will not be earlier than a set date so you know you have a reasonable time to sell your own house or not later than say 6 months after a set date. In the latter case the remedy would be to resile (i.e get out of the contract) without penalty.

Similarly the builder will not provide reports that a normal seller would. I often provide that if the purchaser obtains these, the builder must warrant they are clear of anything adverse. In the absence of contrary provision, risk of insurance damage passes on conclusion of the contract, so I provide that insurance risk does not pass till the date of entry so the purchaser is not responsible till then.

Typically many builders will not let the purchaser see the planning permission or building warrant and plans and will only give a Completion Certificate from the local authority which confirms the house meets certain minimal requirements of the Building Regulations. However the planning permission may contain conditions about formation of roads and common amenity areas like play areas. I usually provide that the builder will pay the cost of formation and so keep the purchaser free from expense. The reason was that I read of a case where the builder was pursued by a Council to complete a retaining wall on some common ground per the planning permission. The Builders argued that since they had sold some plots they did not have to pay the share due by those plots as these plot owners had legal advice at the time of purchase. Given their opposition to changes to the contract this was in my view quite outrageous and I have tried to amend missives against this ever since.

Negotiating power is heavily in favour of the builder who will say “Take it or leave it”. My amendments are fairly minor and I have been successful on many occasions but not all.

In my view there is a further major change required to these contracts but at present it stands little chance of success. This relates to the reality that Builders’ missives are 2 contracts in one. It is perceived as a purchase contract like any other house purchase contract. The truth is that it is also a contract for the construction of a house. This is disguised as there are no effective provisions about the quality of that construction as there would be in a commercial construction contract. While the house does require to pass the inspection for a completion certificate that is about complying with minimum standards of building regulation and is not about quality. NHBC cover is available but although it promises much the cover is minimal and covers structural defects only.

What in my view is required is a detailed construction contract for the erection of a house complying with specified standards of quality and specified materials and provision for putting right defects within certain time scales with penalties imposed if not. Disputes need referred to an independent arbiter or expert surveyor and insurance cover provided to protect the buyer from the possibility of the builder going into liquidation etc. For such a change in practices to occur there would have to be a widespread acceptance by the residential building industry of the need for a satisfactory construction contract for residential properties .I am aware now more than ever before of complaints by clients about shoddy work and defects. At present there is no method of forcing speedy resolution. Perhaps the time is ripe for this to be considered by the building industry voluntarily. They are likely to face calls for imposition of change if they refuse to put their “house in order”.