

We ask if developers and brokers have the right

I am wary about writing articles about legal matters relating to property here in Thailand, writes *John Davids*. The reason? Ask a question and you'll get as many different answers as there are people within earshot.

Attempting to grasp the complexities of law as it relates to property is like applying baby oil to the hands then trying to take hold of an eel. I can't manage it!

This magazine used to run an article on Thai property law. We dropped it because it was out of date and we couldn't find a lawyer willing to try to update it.

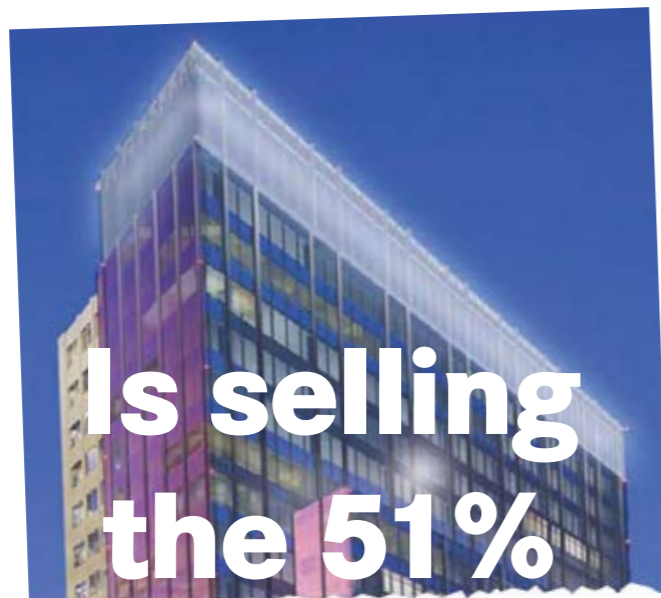
In short, Thai property law is complex and we at **REM** are no lawyers. We don't try to offer legal advice. It's an arrangement that works reasonably well; lawyers don't produce property magazines, we don't practise law!

Over-simplification?

Time to get to the point. It's my belief that (at the time of writing) the law limits the number of units that can be sold to foreigners (farangs) in any one condo block to 49 per cent of the total; the balance should be sold to Thais or Thai companies. If that's an over-simplification, I apologise, but I'm fairly sure I've got the sentiment right if not the exact wording.

This 49 per cent cap seems to be the bane of many a developer's existence where the condo block is predominantly aimed at the farang market. Of course, it should be acknowledged that there are many developments aimed at Thai people where these percentages are pretty much an irrelevance.

But, for the purposes of this article, I'm going to look at condos with strong farang appeal and ask: Do developers and brokers have the right strategies in place to address the requirement to sell 51 per cent in a Thai name? Are they doing enough to address this? Could they do more? Will finding a clever solution put one



development ahead of others in terms of success?

Before I get into the replies these questions received I must point out that some developers are certainly not lacking in imagination. Converting the balance of unsold properties into serviced apartments for hire is one ploy I have heard of. The "buying through a Thai company route" is still on the agenda, but for reasons I don't pretend to understand this is not as popular as it once was.

Of course, the raising of the 49 per cent ceiling would provide a big boost to the market. I reported a while back that one

government department was considering *lifting* that figure to 70 per cent. Trouble was that at the same time another government body was debating *lowering* the 49 per cent.

It's difficult to know what to believe at times.

So what is the solution? Is there one? Over to our industry insiders ...

David Walton of The Waterfront near Bali Hai Pier said: "The current Foreign Quota is an unnecessary barrier to foreign investment in Thai property.

"I have never understood exactly what the quota was designed to achieve. Is it supposed

to limit the potential for foreign speculators to control land?

"Is it designed to prevent property becoming unaffordable (to Thai investors)?"

"Is it simply a nationalistic device that promotes the notion that Thailand cannot be bought (by foreign money)?"

"Whatever the reasons behind the quota, the result is the same. It discourages inward investment and creates huge pressures on both Thai and foreign developers and investors."

David added: "Ever more Machiavellian ploys to circumvent the quota including perpetual leasing, fractional ownership, off-shore trusts etc certainly create plenty of work and wealth for the lawyers. For the buyer and seller they are nothing but obstacles."

"At a time when the Government is spending big money on promoting the country as the 'location destination of choice' shouldn't they be looking a little beyond the two-week vacation visitor?"

Paul Davies of KCR Homefinder was pragmatic. "This is toughie," he said,

"and in my opinion there is no simple solution acceptable to the old school conservative Thai policymaker. These ladies and gentlemen are not going to make radical decisions at a time when political uncertainty remains and their positions of office may be considered tenuous."

"Sure we can bang on about raising the foreign ownership threshold as a means of attracting more sales however; we mustn't forget where we are and the fact that certain laws are somewhat protectionist and not necessarily in accord with those of neighbouring or Western countries."

Paul added: "So what can we do to attract more Thai buyers? I know a number of developers offering discounts to Thai buyers or foreigners with a Thai spouse or partner. Some say this is unfair. However we can't,

strategies for selling units to Thais

unfortunately, have it all ways and a guarantee of ownership is worth the premium.

"In the past Pattaya had a reputation for sleaze resulting in many people, Thai and foreign, being put off coming here by the stigma this attracted. Thankfully this is changing and we see major players in the hotel, resort and condominium industry investing here, attracting high-end spenders both Thai and overseas."

"The profile and image of the city is rising and will continue to do so, so would it possible for a body of like-minded people such as condo developers, our city fathers, chambers of commerce, the local TAT office and, of course, banks and mortgage houses to come together? They could pool their knowledge and resources to hold an on-going series of Pattaya condo road shows with media advertising and marketing campaigns aimed directly at the Bangkok Thai market."

"After all it is far easier to get here than say Hua Hin, Samui or Phuket from Bangkok and prices are generally lower especially with Thai buyer discounts on offer."

Working together

"I feel this is an opportunity waiting to happen as we have a great number of excellent, yet undersold, buildings and, by using the skills and knowledge of developers and participating agencies with a willingness to work together, Thai buyers and investors will come."

Cees Cuijpers of Town & Country said: "Selling out any development is obviously important as everyone knows that the project profits are retained in the last units sold! Being 'creative' certainly helps the developer but doesn't guarantee sold-out signs on any property!"

"So, what we now see happening here in Pattaya is that projects are offering a far *better* product in terms of originality,

finishing and price. 'Quality sells' is a statement that makes sense and always has done!"

Cees added: "As it will almost be impossible to enhance 'Thai interest' in a project; developers simply try to create a much better product that attracts everyone, so the project will sell, anyway."

"That circumvents a lot of problems and it will benefit the *buyer* who receives much greater value for money!"

"People still seem to forget how relatively affordable it is living in this beautiful nation. As for we 'live-in' guests of this wonderful country, we simple have to live by its laws and regulations."

"Whenever and whatever changes there are in the future, we will have to stick with them. At the end of the day there are thousands of families living in nice houses; and they don't seem to be bothered."

Tim Gladwin of Sallmanns said: "The reality is that there is no simple solution to this problem because foreign demand for condos in Pattaya is currently stronger than the demand from Thais, yet the law dictates that 51 per cent of a condo's saleable floor space must be sold to a Thai individual or company."

"Thus, in the absence of a law change, the only answer is to try to stimulate demand among Thais. However, the Thai market, a high proportion of which is Bangkok-based, is often simply ignored."

"There is evidence that those who focus upon it have a degree of success. Raimon Land (Northshore and Northpoint), Major Group (Reflections) and Ocean Marina (Portofino) are examples."

Here Tim is in agreement with Paul Davies when he says: "In short, a great deal more marketing, both of Pattaya generally and of individual projects, needs to be focused upon prospective Thai buyers. Lots of

wealthy young Thais are spending increasing amounts of time in Pattaya. Developers need to focus as much effort on them as they do on expats and tourists."

Adam Kuhl of Tudor Villas said: "All developers know that the profit for any project lies within the 51 per cent that has to be sold to a Thai national or Thai company."

Tastes differ

"Therefore, it is extremely important to offer as many units to the Thai market as possible. As Thai tastes in design differ so much to foreigners, a developer must be able to offer units that are going to appeal or make it an attractive investment opportunity."

"We are fortunate that a number of our foreign investors have chosen to buy using a company setup, usually to avoid taxes back home. Consequently, Tudor Court still has a good number of units available under foreign ownership."

Heiner Moessing of Siam Properties said: "As with every regulation interfering with a 'free' market we have primary and secondary effects: the primary effect is that Thai nationals should be protected. So far so good, understandable in cases where the local market cannot adjust to the global market. Although in case of properties I absolutely don't believe that this is necessary."

"The secondary effect is even more questionable, in fact a discrimination of Thai nationals: in 13 years on the Pattaya property market I met many Thais who wanted to sell a condo in a building where the "foreign quota" was full. As the huge majority of buyers in Pattaya are foreigners and not Thais I could not sell these condos."

"In the boom years Thais could not participate in buying and selling of contracts in triple A properties. The 49-51 per cent regulation restricts property rights of Thais nationals, maybe even more than for foreigners." 



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