Property Rights in the Republic of Cyprus

Your reference: GW/JS/O'Ha001/1

I refer to your letters on the above subject in which you enquire as to the steps the Government of Cyprus is taking in order to encourage banks to notify property owners with regards to the existence and size of pre-existing mortgages on their property and I wish to inform you of the following:

The new legislation provides more protection and security to the buyers of property even in cases where there is a prior mortgage on the property.

CPAG Comments (all in red)

Firstly, the 'new' legislation does still not give full protection to buyers and secondly, any legislation is only protective if it is enforced which does not happen where it does not suit the vested interests.

For example, under the previous and 'new' legislation one of the major consumer protection clauses (CAP 96/Article 10) calls for the issuance of a Completion Certificate before the buyers occupy the property, for obvious reasons. Indeed the buyers and developer are committing a criminal act in occupying such a property which is still illegal. Furthermore the individual title deeds cannot even be applied for without this certificate.

We are aware of clients of even the largest developers currently occupying properties (for over 20 years) without this certificate.

This law has never been enforced by the Government (Ministry of the Interior) nor are there any obvious moves to enforce it going forward.

Moreover this 'new' legislation was only developed on the back of an 'Amnesty' for the legion of developers (and buyers' lawyers) which has totally disregarded this particular consumer protection law over the years.

Finally, CPAG has also demonstrated that the Cyprus Government is failing to enforce two important EU consumer protection laws. Our complaints to the Commission registered under CHAP (2011)03252(Unfair Commercial Practices Directive Law) and CHAP (2012) 3262 (Unfair Terms in Consumer Contracts Directive Law) further demonstrate that Cyprus has deliberately hidden these laws from consumers, which itself is a breach of the Directives.

It would therefore appear that in Cyprus any consumer protection laws, especially when the vested interests are involved, are illusory at best due to the systemic corruption which prevails.

Under previous legislation, in order for the mortgaged property to be transferred to the purchaser, it was necessary that the vendor paid off his mortgaged debt to the creditor. Where the vendor was unable to perform his obligations against the creditor, the purchaser could not activate his right for specific performance, because of the existence of the previous mortgage, unless he paid off the mortgage debt himself.

In the absence of a Completion Certificate a buyer cannot activate his right to specific performance in the courts as the property is still illegal.

A buyer may first be able to obtain a court order to act in the developer's capacity to obtain the certificate, which may involve incurring expense to complete the development in order to achieve this. The cost of this may prove prohibitive in itself if it is a large and unfinished development.

The buyer would also have to pay off any other debts besides the developer mortgage, such as associated unpaid taxes and also any other claims against the main title deed, as a result of court action by sundry creditors before individual title deeds could be transferred.

The buyer would then have to take legal action in the overloaded and failing courts lasting more than a few years to sue the (now-bankrupt?) developer for the buyer's additional costs.

As a result many buyers who investigate the prospect of suing for specific performance find that this so-called protection of their property rights is nothing more than a sick joke.

The new legislation provides the opportunity to the purchaser, when the object of the sale is mortgaged, to pay the amount due each time under the sale contract, to the mortgage creditor directly and not to the vendor. When the purchaser pays that part of the mortgage debt that corresponds proportionally to the value of the property he has purchased as compared to the total value of the property mortgaged, the Court may issue an order for specific performance, ordering the registration of the property in the name of the purchaser free from the encumbrance of the mortgage. The part of the mortgage debt that is attributable to the purchaser is determined by the ratio of the value of each property under sale, in relation to the total value of the mortgaged property ("value ratio"). The purchaser can ask the vendor to inform him of the value ratio of the property under the sale in order to be aware of the part of the mortgaged debt apportioned to him.

How on earth is the average prospective buyer supposed to know about 'value ratios' and also whether the developer has a mortgage on the development?

In any case, under the Unfair Commercial Practices law the developer, and especially the buyer's own lawyer, are required to inform the buyer of any material facts – such as developer mortgages and the risks involved, before they make a decision to purchase. It is also the lawyer's duty of care to carry out searches and inform the buyer.

The new legislation also provides for the deposition by the seller of the planning permit and the relevant plans attached to it, at any time before the sale of any part of his property to any purchaser. The "value ratio" is determined in accordance to the planning permit. Despite the fact that the "value ratio"/planning permit must be deposited at the same time when the sale contract is deposited at the Land Registry, in the new legislation this does not constitute a precondition for the deposition of a contract of sale.

Therefore, the Director of the Department of Lands and Surveys has given written directions to all the District Land Officers that in cases where the value ratio has not been determined and deposited by the seller at the stage of the deposition of a sale contract, the Land Officer in charge must inform the applicant who deposits the sale contract that in order to be able to

make use of the new provisions of the legislation (providing for the priority of the contract of sale over the pre-existing mortgage) it is necessary for the buyer to deposit to the mortgagor/creditor the mortgaged debt that corresponds to the part of property he bought and that this is determined by the "value ratio".

Therefore, today there is a way (provided by the legislation) for the buyer to find out about the size of the mortgage debt without any need to request any information from the banks directly.

The previous three paragraphs demonstrate the ridiculous nature of the law in regard to the planning permit and 'value ratios' and their deposition at the Land Registry in respect of the deposition of the sales contract – '**any time before'**, '**at the same time'**, '**does not constitute a precondition'!**

It should be stated that buyers' lawyers usually deposit these sales contracts at the Land Registry and not the buyers. So we have a provision (not a legal requirement) where the Land Officer (from our experience and feedback some of the most corrupt of public officials) may or may not tell the buyer's lawyer about the presence of a developer mortgage. As this lawyer has already broken the law by not doing a search and already informing his/her client of a mortgage before the signing of the contract, what does the Ambassador think the lawyer will now do?

In addition, a contract locking the client into the purchase has already been signed by both parties (one of whom broke the law to facilitate this) and what is more a substantial deposit will already have been paid.

The Ambassador then goes on to grandly declare that the legislation provides for the buyer to find out about the size of the mortgage debt without the need to request any information from the banks 'directly'. Wrong! The Land Registry records only show the value of the initial mortgage against the main title deed.

As we know from buyer situations the size of the debt may be much more than this due to the failure of the banks to manage non-performing loans (NPLs) according to European standards.

Also if the buyer obtains a mortgage to purchase a property the bank must under the Unfair Commercial Practices law inform the buyer of any material facts such as the presence of a developer mortgage; and the risk that even if the buyer pays his/her mortgage in full, that they may still never own the property if the developer goes bust.

As for the existence of the previous mortgage, although the new legislation does not make any provision for this, the Director of the Department of Lands and Surveys has given written directions to the District Land Officers in charge of the acceptance of deposits of sale contracts, to inform the applicants before they proceed to the acceptance of their sale contracts for the purposes of specific performance of the existence of a previous mortgage on the property, the object of the contract of sale.

Too late! And they are only informing the 'bent' lawyer not the buyer.

Therefore, the applicants are asked to sign a written declaration on the form of application for the deposition of the contract of sale that they have been informed of the existence of the specific encumbrance and that despite that fact they are willing to proceed with the deposition of their sale contract.

This is the really dishonest part and may undermine any buyer's legal rights if 'their' lawyer signs this.

It must be emphasized at this point that in all events the purchaser of a unit of property, has the right to apply to the Director of the Department of Lands and Surveys before buying any property, and ask to be furnished with a Search Certificate, thus finding out about the existence of a pre-existing mortgage on the property. Under section 51A of the Law, Cap.224, the Director of the Department of Lands and Surveys may provide any interested person with any information recorded in the Land Register or in any other book kept with any District Lands Office, current or previous, including amongst others, any encumbrances on the property in question.

Which industry or developer website informs prospective buyers about this dishonest practice of developers' mortgages encumbering 'their' properties that they will pay for in full but may never own?

Finally, it is worth mentioning that the new Law secures the amount paid by the purchaser, where the specific performance of the contract is not possible, either due to inability on the part of the vendor to release the object of the sale from any encumbrances or due to the sale of the property or for other reasons. A similar security is provided also where the Court, instead of a specific performance order issues an order for compensation. In both cases, the amount is secured in accordance to the priority of the encumbrance created by the deposit of the sale contract.

The buyer bought and paid for a property in full and good faith but years later may have to pay (another?) lawyer and the court fees to take legal action against a developer who may have now gone bankrupt. In this case the main title deed will be encumbered by the buyer's claims (original purchase price!) bank mortgages (NPLs?), back taxes and possibly numerous other creditors' legal claims – we have situations like this currently at the ECHR.

At this stage a liquidator charging hefty fees will be required to sell the development and distribute the proceeds amongst the various claimants and the (now homeless) buyers will be left with just a portion of their original investment. Otherwise the buyers can pay off all the creditors and legally own a property they thought they had bought in good faith and paid for in full years ago.

And the Ambassador has the nerve to mention in his preamble the phrase 'more protection and security to the buyers of property'!

Furthermore, it would appear from these 'cosmetic' changes laws plus the deliberate refusal to enforce EU and local law that the Government plans to do little to improve the scandalous situation and instead continues to mislead the EU, based on this response which we are sure was not written by the Ambassador.

I remain at your disposal for any further information (garbage) *you may require.*