



Buying Off-plan, First Steps

Before you commit yourself to an off-plan property purchase or pay any money, it's vital you do your homework on the property, the development (*promoción*) and the developer (*promotor*). There's currently a huge variety of off-plan property available (often confusingly similar) and it's easy to be carried away by the property developer's and/or estate agent's sales pitch. You may be put under pressure to pay a deposit immediately and told that there are queues of other clients waiting to buy the property. While this may be true, the chances are that you will be able to find another property elsewhere and it may be better and/or cheaper. In the current property market where new developments are taking considerably longer to sell, it's a buyer's market and you should take advantage of this.

Once you've chosen a property, you must do the following:

- Obtain as much information as possible about the developer. First impressions are important so look carefully at the quality of the show house and brochures, and how professional the sales representatives are. However, remember that it's easy to produce glossy brochures and stunning show houses, but not so easy to build 50 top-quality apartments! Find out about the developer's reputation by looking at previous projects, asking around, doing internet searches (sometimes just typing the developer's name in a search engine brings up a wealth of sites listing problems!) and using internet forums.
- Ask for as much information about the property as possible. This includes architect's plans of the property itself and the development as a whole; price lists for the different types of property; lists of materials and specifications (*memoria de calidades*); and whether it's possible to make changes to the property (e.g. room distribution, fittings and colours).
- Check the list of specifications and find out exactly what they include. The list should include the materials used for floors, roofing and pipes etc; colours of walls, doors, windows and tiles; bathroom fittings; whether fitted wardrobes are installed; and kitchen fittings (if appliances are provided, the brand names should be listed).
- Check future development plans for the area by enquiring at the local council's planning department (*departamento de urbanismo*). This is very important if the area surrounding the development is undeveloped – never assume it will remain so. Many buyers bought off-plan assuming that their property would have privacy and/or uninterrupted views only to find this wasn't the case.

- Check the orientation of the property you're planning to buy. In order to secure the sale, a sales representative will happily promise you sea views or a south-facing property, but you can only guarantee this if you check the plans of the whole development and find out exactly where your property lies in relation to the sea or the south.
- Get your own independent Spanish lawyer as soon as possible, don't take the lawyer recommended by the developer or the real estate agency. Ask for legal documentation (see **Documentation** below). Your lawyer will do this on your behalf, but it's a good idea to ask for it before you pay any money. A reputable developer will have copies of all necessary documentation available in the sales office. Most Spanish lawyers have a professional indemnity insurance for your peace of mind.
- Look at the plan of the property very carefully. On an architect's scale drawing it's difficult to imagine the actual size of the property and the rooms. The finished product is often smaller than you might have imagined, particularly the bedrooms (the average size of an off-plan apartment in 2005 was 100m²). Base your judgment on similar measurements in your current home or look at the show house. Check the size of the gardens and pool, and decide whether they're adequate for your needs – pools are often far too small for the number of properties they serve.
- Find out about the other buyers and what sort of community the development will have and check whether your neighbours will be mainly Spanish or foreigners. Some foreigners don't wish to live in a community consisting mainly of their fellow countrymen (or other foreigners) and this may also deter buyers when you wish to sell. On the other hand, some foreigners don't want to live in a Spanish community, particularly if they don't speak Spanish.
- Ask about other plans for the development such as sports facilities and shopping centres. Developers are quick to promise all sorts of extras, but should provide evidence of these such as architect's plans and planning permission from the local council.
- Enquire about progress reports. Developers are notoriously lax about providing information on the progress of building work, which can be difficult to obtain unless you visit the site yourself periodically. The best developers provide photos and monthly reports on work, but these are few and far between. Alternatives include specialist companies and professionals (there are several in resort areas) and internet forums where fellow purchasers offer news on building work. The website Eye on Spain (www.eyeonspain.com) also provides progress reports on certain developments.
- Find out what discounts or special payment deals the developer offers. When sales are slow, some developers offer inducements to buyers which may include anything from a 'free' car to a holiday including 'free' accommodation and flights. Bear in mind, however, that the cost of these 'gifts' is included in the price and you should be able to get an equivalent (or even larger) cash reduction by haggling.

SURVIVAL TIP

Don't sign or pay anything when looking round a development for the first time. Give yourself a cooling-off period and look at alternatives.



Payment

When a building is purchased off plan, payment is made in stages as building work progresses and is typically one of the following:

- A reservation price (e.g. €3,000) paid when you make your decision, 30 or 40 per cent of the price paid when you sign the contract and the rest (around 60 or 70 per cent) on completion. This option tends to be the most favoured by developers. You shouldn't pay or sign any of these documents without letting your spanish lawyer know in advance.
- A reservation price (e.g. €3,000) paid when you make your decision, 10 per cent on signing the contract, 20 per cent for three stages and 30 per cent on completion. **It's important to ensure that each stage is completed satisfactorily before making payments.** If you aren't able to do this yourself, you must engage an independent representative (e.g. an architectural engineer – *aparejador*) to do it on your behalf.

Developers are legally obliged to insure all stage payments with an insurance policy (*seguro*) or a bank guarantee (*aval bancario*) and keep payments in a separate account so that if there are any problems (e.g. the developer goes bankrupt) your money is safe and can be returned to you. Not all developers do this and some have even produced false insurance policies issued by companies that don't exist! If a developer cannot produce proof of insurance or a bank guarantee, look elsewhere. All new homes are subject to 7 per cent VAT (*IVA*) plus other fees and taxes.

Developers often finance construction work with mortgages, which you can choose to take on when you buy the property. Mortgages are typically for 50 or 60 per cent of the property's price and may be advantageous because you don't incur valuation and set-up fees. However, the terms and interest rate offered may not be the best on the market and it's worth shopping around and comparing deals before you commit yourself to taking on the developer's mortgage.



Documentation

Once you've committed yourself to the purchase of an off-plan property, your spanish lawyer starts legal checks on the developer and development before you sign the contract (see below) and make the first stage payment. These checks should include:

- Planning permission for the development from the local council is in order. This permission should include the number and sort of properties, and number of floors (developers have been known to add extra storeys).
- Approval from the local council of the development's plans for infrastructure, including water and electricity supplies, and access routes to the development. If the plans haven't been approved, municipal services may not be provided.
- The title to the land (i.e. the owner of the land) belongs to the developer's company.
- Proof that the developer has an insurance policy or bank guarantee covering stage payments (see above).



The Contract

Once your Spanish lawyer is satisfied that all the development's paperwork is in order, the next stage is the signing of the contract and first stage payment. Lawyers are rarely permitted to draw up off-plan purchase contracts (unlike contracts for resale property purchases) and the buyer is often presented with a ready-made contract, which usually represents the developer's interests. Your lawyer should check the contract thoroughly and discuss its implications with you before you sign. He should also try to remove as many unfavourable clauses (to you) as possible, although, in practice, many developers refuse to modify a contract and you're obliged to accept the contract on the developer's terms or look elsewhere.

Contracts should include: full details of the buyer and seller, including the developer's company name and registration number; a full description of the property (including size in m²) with a scale drawing attached to the contract; stage payments with the date and amount due; other financial information, e.g. mortgage (see below); list of specifications; delivery dates and penalties for not meeting these (relatively few contracts include penalty payments for late completion); and penalties for both parties if they fail to meet the conditions of the contract. If the developer fails to build the property as specified in the contract, he's usually obliged to return all monies to the buyer. If the buyer fails to make the stage payments at the specified times, he usually loses all or a large percentage of the previous payments.

Beware of clauses known as abusive clauses (*cláusulas abusivas*) because they are clearly in the developer's favour. These include forcing the buyer to pay the *Plus Valía* land tax (this can be very high if the developer has owned the land for a long time – see page ?? under Fees in this chapter); forcing the buyer to pay mortgage cancellation costs (around €500) if the developer has one on the apartment and you don't wish to take it on; and forcing the buyer to complete the purchase without the First Occupation Licence (*Licencia de Primera Ocupación* – see **Completion** below).



Completion

Let your Spanish lawyer check all legal documents and assist you during the signing of the title deeds, it is part of the Spanish lawyers job to do this for you. New properties are rarely completed on schedule (up to 80 per cent are delivered late) and in some cases, the property may be finished up to a year after the original estimate. Once the property is finally finished, you should check it to make sure it meets the original specifications and your expectations.

This process, known as ‘snagging’, should be done before you make the final payment. If you have the time, you can do the snagging yourself or hire a surveyor to do it for you – several companies provide this service in resort areas. Don’t rely on the developer or estate agent to do it on your behalf. Once you’re satisfied that the property and surrounding development are in perfect condition (don’t accept anything less – after all, you’re making a huge financial investment), the next stage is the signing of the title deeds and payment of outstanding monies at the notary’s office (*notario*). In order to sell, the developer must produce the following documents:

- Certificate stating all building work has been completed (*Certificado de Final de Obras*) issued by the architect;
- First Occupation Licence (*Licencia de Primera Ocupación*) issued by the local council’s planning department and stating that the property is fit to live in. **This certificate is essential and without it you cannot take out a mortgage on the property or connect to utility supplies.**
- Certificate of a ten-year insurance policy (*seguro decenal*) against structural damage on the property. A new property cannot be registered without this certificate.

WARNING

Some developers sell completed off-plan properties without the First Occupation Licence and offer the use of their electricity and water supplies (used for work on the site) free of charge. However, once the developer has finished at the site these supplies are cut off and without the First Occupation Licence you cannot obtain your own utility supplies.

Once the title deeds have been signed by both parties, you will be given a copy of the keys. Note that you will need to connect to electricity and water supplies, and that this may take up to two weeks so don’t make immediate plans to occupy the property.

Furniture packages are available and are usually good value for money. The complete furnishing of a holiday home costs from around €4,500 for one bedroom, €5,000 for two bedrooms and €6,000 for three bedrooms. Some companies offer complete bespoke furnishing packages including every last detail such as soap in the bathroom and tea bags in the kitchen cupboard; expect to pay at least €12,000 for this service for a two-bedroom apartment.

If you plan to let your property, many new developments have their own sales offices (*oficinas de alquileres y ventas*), usually offering a full management and rental service on behalf of non-resident owners.



Problems After Purchase

Newly finished properties often have defects that aren't visible immediately after purchase or defects that appear with time, e.g. cracks in walls, dislodged tiles and leaking pipes. Under Spanish law, the developer, builder and architect are legally responsible for the following defects and obliged to correct them at no cost to the owner:

- minor defects (*defectos menores de construcción*) such as cracks in walls or ill-fitting windows: the developer is responsible for these for up to one year after the property is sold.
- medium defects (*defectos medios*) such as problems with subsidence or sanitation: the developer is responsible for these for up to three years after the property is sold.
- structural defects (*defectos estructurales*): the developer is responsible for these for up to ten years after the property is sold and must produce an insurance policy (*seguro decenal*) covering these when the property is sold.

If you discover a defect in your property, it's important to notify the developer immediately and he is legally obliged to rectify it as soon as possible, but in practice many developers don't and some even turn a blind eye. In this case, your only alternative is to start legal proceedings against the developer and arm yourself with patience as these proceedings can take months, if not years!



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