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Do you swallow the lemon, or is there any legal recourse for you?

**BYLINE:** Leong Chan Teik

**BODY:**

SO YOU have found your dream home, plonked down some of your hard-earned cash, and can't wait to move in.

Then comes the shocker. Your lawyer discovers that the seller is bankrupt. Or the property's land area is smaller than advertised.

Or the seller cannot be contacted when you want to exercise your option to buy - as was the case with reader Katherine Tan, whose recent letter in the Forum page of this newspaper prompted other readers to write in discussing her plight.

The option later lapsed, and Ms Tan could not recover her option money.

Her story led The Sunday Times to ask lawyers for cases of property deals that went sour in other ways, and how they were resolved, if at all.

IT DOESN'T AD-D UP

A COUPLE paid more than \$20,000 for an option to buy a property advertised as having a land area of 297 sq m.

The lawyer whom the buyers engaged ran routine title searches, and discovered the area was only 269 sq m.

On the face of it, the buyers had little recourse as the option document they had signed stated that the express terms of the option superseded all other representations.

Amazing as it may seem, legally, that can be interpreted to include the housing agent's misleading advertisement.

The buyers wanted to call off the deal. Says Mr Justin Wee, a partner in Loke & Seah Advocates & Solicitors, who acted for the buyers: 'We argued on the basis of misrepresentation and that my clients had relied on the advertisement.'

Happily for the couple, the seller was most unhappy with the agent about the way he had worded the advertisement, so he decided not to rely on the option document to push the sale through.

'The deal was aborted, and my clients had their money refunded in full,' says Mr Wee.

WHO'S THE OWNER?

BEFORE paying the option money to secure a property he wanted to buy, a client engaged the lawyer to do the necessary title searches.

Mr Justin Wee discovered that the seller, who was in his late 20s, was not the owner of the property. He was actually the grandson of the owner, but would inherit the property under his grandfather's will.

The grandfather was ill, bed-ridden and incapable of comprehending instructions and questions.

Mr Wee told his client and the seller that the latter would not become the owner until his grandfather had died and until the relevant court sanction had been obtained.

Faced with these complications, his client decided not to proceed with the purchase of the property.

'If my client had gone ahead to pay the 1 per cent option money before engaging me, he would have paid to the wrong party, who was incapable of passing the title of the property to him.'

Similarly, a bankrupt may be legally incapable of passing the title of his property as his creditors may have a claim.

YES...NO, I WANT IT BACK

WHEN property prices were rising and rising in the 1990s, sellers could be offered better prices shortly after agreeing to sell to another buyer.

With more dollars dangling before them, sellers sometimes offered compensation to the original buyers to persuade them to pull out of the deal, says Mr Vijai **Parwani**, managing partner of **Parwani** & Company.

However, a valid and binding contract comes into existence once buyers exercise their option to buy the property.

They are not obliged to accept the offer of compensation even if the sum more than adequately compensates them for any potential 'loss' they suffer if they buy a similar property in the same neighbourhood, says Mr **Parwani**.

In a case he handled, the seller did not want to go ahead with the sale after the buyer had exercised his option to buy.

'We threatened to pursue the matter all the way by asking the court to order 'specific performance' - which means demanding the seller complete the sale.'

The seller relented and the sale was completed as scheduled, says Mr **Parwani**.

MISSING CLAUSE

FOR one reason or another, a seller may want the deposit paid directly to himself, instead of to his lawyer.

Mr Alexius Chang, a partner of Wee Tay & Lim, says: 'It's not a matter of life and death, but we have a duty to explain to clients the possible consequences of there not being a stakeholding clause.'

The clause says the seller's lawyer will hold the deposit (9 per cent of the transaction price) until the deal is completed.

Referring to a case he handled, Mr Chang says he was shocked to see the stakeholding clause absent from the option document put together by the seller's housing agent.

He learnt later that the seller had insisted the money be released to him directly, and Mr Chang's client had agreed.

'If the deal were aborted and if the seller had used the deposit to pay off his debts, the purchaser would likely have had a hard time getting his money back,' says Mr Chang.

AUCTION TRAP

MOST people who bid at auctions for properties fail to examine first the conditions of sale, which tend to be very onerous, says a lawyer.

If property taxes are back-dated for some reason or other, you are the one who has to pay them.

'In a normal transaction, you can claim from the seller. In an auction sale, you can't claim from the bank,' he says.

One of his clients was faced with having to pay \$150,000 in back-dated taxes. It was only after representations to the tax authorities that the claim was withdrawn.

Another case: The lawyer tells of a client who bid successfully for an industrial property at an auction recently, but is now having trouble completing the deal.

There is a caveat on the property lodged by the original owner, who did so to protect his interests as he had not received the title to the property yet. The deal cannot go through until the original owner renounces his claim.

'The mortgagee bank which force-sold the property is saying 'No, under the conditions of the sale, we are not responsible for removing any caveat', ' says the lawyer.

Another key thing to note is that once you are the successful bidder, you sign the contract immediately after. There is no 14-day period for you to mull over your option to buy before signing a binding contract.

#### AT DEATH'S DOOR

IF AN owner has died and his property is put up for sale by his estate, there are legal and administrative steps to be taken before it can be sold.


In a case handled by Mr Wee, the sale was taking place more than six years after the death of the owner.

That would not have been a major problem if the owner's will had contained a provision that expressly allowed postponement of the sale of assets.

Without this provision, the administrators of the estate had to obtain a separate Order of Court to sanction the sale, says Mr Wee. This was to ensure that the beneficiaries were aware the asset was being sold.

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