

Legal opinion

What are possible negative effects of New Developer Act?

The Act of 20 May 2021 on the protection of the rights of buyers of apartments and single-family houses and on the Developer Guarantee Fund (consolidated text: Journal of Laws 2021, item 1,177), popularly referred to as the New Developer Act (henceforth NDA), is coming into effect on 1 July 2022. This means, in practice, that its provisions will apply to projects whose sale begins after that date. Projects whose sale begins before 1 July 2022 will remain regulated by the previous rules for another two years, i.e. until 30 June 2024. So if a developer sells at least one unit in a project before 1 July 2022, they will have two more years to complete the project under the old rules. Projects started after 1 July 2022 will be governed by NDA.

Developers and banks will be the most affected by NDA, which may impact the execution of housing projects in a significant way. Although NDA was drawn up with the interests of home buyers in mind – its express purpose is to increase their protection – the consequences for buyers will not be uniformly positive. From a purely economic standpoint, buyers will experience negative effects. While their contractual position against the developer will definitely become stronger, NDA is likely to push up home prices, complicate the purchase process in many cases, and increase the time it takes to line up financing.

Loans will become more expensive because NDA burdens banks with new requirements. Under NDA, they will be responsible for evaluating documents submitted by developers, for the proper financial settlement of projects, and for the release of funds from buyers' escrow accounts (MRP). So the costs for banks of financing housing projects will increase. So will the length of procedures. Before releasing escrow funds to developers, banks will have to verify the completion of each stage of a project. The costs of this verification will be borne by developers, pushing up their costs and, in all likelihood, feeding through to home prices.

Furthermore, growing concerns are being voiced that the transition rules in NDA (i.e., the provisions of Article 76, under which current rules are to continue to apply to certain projects after 1 July 2022), which we discussed in earlier issues of PMR Construction Insight: Poland, are too complex, and that developers may be confused as to which rules should apply to which sale agreements. NDA will thus create an expensive compliance burden for developers, who will be at a high risk of falling foul of the new regulations and exposing themselves to liability from buyers.

So despite a positive overall assessment of NDA, its impact is far from straightforward.

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