BEWARE THE BUILDING DEADLINES WHEN BUYING-TO-BUILD

Here’s yet another warning from our courts to take seriously the building deadlines commonly imposed on buyers of plots in residential estates. Failure to comply with them could expose you to heavy fines, recurring penalties and even the risk of losing your plot altogether.

A Home Owners Association (HOA) imposed “double levy” penalties totalling R105k on the owners of a plot when they failed to start development before deadline.

Taken to court, the owners challenged the validity of the penalties on a variety of technical and other grounds, but failed on every count.

The end result is they must now pay the penalty levies, late payment penalties, and attorney-and-client legal costs for both the original magistrates’ court hearing and for the unsuccessful appeal to the High Court.

3 lessons for HOAs and buyers

1) The HOA’s victory in this case highlighted several important factors that both HOAs and buyers would do well to take note of – The HOA’s power to raise “recurring penalties” was upheld only because of the wording of its articles of association. They specifically gave the HOA the power to “impose a system of fines or other penalties”. Had the wording only allowed “a fine”, its attempt to impose a recurring penalty would have been shot down (exactly that happened to another HOA in an earlier case).

2) Penalties must be proportionate to the prejudice suffered by the HOA, but courts are unlikely to interfere unless “the penalty is unduly severe to an extent that it offends against one’s sense of justice and equity”. Here, the double-levy penalties were upheld because the “ongoing delay in developing their property in accordance with their obligation … prejudiced the underlying rights of other owners … to enjoyment of a fully developed estate.”

3) The title deed gave the HOA the right to claim the plot back for breach of the building clause, but, held the Court, that right did not replace the right to claim penalties; it was an additional right available to it.

The bottom line for “buy to build” plot purchasers is this - make absolutely sure before buying that you will actually be able to build by deadline.