



THE REPORT ON THE DIFFERENCES BETWEEN THE DESIGNED AREA COMPARED TO THE BUILT AREA

The report shows the differences between the designed area compared to the built area, and methods to measure it in selected European countries united in the European Union of Developers and House Builders (UEPC).

THE POLISH ASSOCIATION OF DEVELOPERS

Warsaw, 6 October 2014

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The Polish Association of Developers, in order to present substantive and comparative contribution, which is the basis for creating in Poland appropriate legislation in the range of differences area, turned to the members of the European Union of Developers and Housing Builders (UEPC) with the question of how in each country is regulated legal issues related to the differences in the designed area compared to the built area.

The associated countries responded to 10 questions relating to the permissible measuring differences apartments. The collected data were the basis for the preparation of this report, which provide a basis for cooperation with the Office of Competition and Consumer Protection in order to create good legislation regulating the derogations for area actually built into the designed, as well as determine the rational method of measuring these areas.

Data table 1. The survey of the member states of the European Union of Developers and House Builders (UEPC) concerning differences in the area of housing..

| | BELGIUM | FRANCE | SPAIN | MALTA | GERMANY | NORWAY | UNITED KINGDOM |
|--|---|---|---|---|--------------|------------------|---|
| 1. Does your country allow to sell apartments which have not yet been built? | YES | YES it is the most common way of selling new housing under the VEFA (“vente en l’état de future achievement”) rule. | YES | YES | YES possible | YES | YES |
| 2. Does your country sell apartments giving a precise amount of living area? | YES but there exist no official measurements methods. | YES even though contracts might determine a percentage of uncertainty, preliminary contracts usually determine an “approximate living area” | YES | YES | YES possible | YES | NO |
| 3. If your reply to question No. 2 is a positive, with which precision is given the apartment’s area (about 1 m ² , 1/10, 1/100 m ² , etc.)? | 1 m ² with same remark as above | Usually 1 m ² . | Yes, although the law doesn’t establish with such a detail, we could consider 1 m | 1 bedroom apartment - 45 m ² . 2 bedroom apartment - 75 m ² . 3 bedroom apartment - 96 m ² . | about 10% | 1 m ² | The tolerances which would be acceptable for an off-plan sale would depend on the circumstances and interpretation by the Court. In practice there are very few claims for size differences since these |

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| | | | | | | | would have to be substantial to be able to show economic loss |
| 4. In case of the sale of apartments which are not yet built, the apartment's living area is determined based on the project. However, the construction process always reveals a different result. Has your country put in place a margin of error for such difference? | 1/20 | Legal precedents consider that a margin of error below 5% is acceptable. | NO | NO 0% margin of error | 10% in combination with an Individual assessment with reference to the impairments/value in use Legal orientation/jurisdiction | In Norway there is a good correlation between designed and measured as-built space. We have a strong consumer legislation that protect the consumer. We also have Norwegian standards specifying how to measure, acceptable tolerances. | NO |
| 5. Does the customer have the right to terminate the contract without any consequences if you exceed the allowable margin of error? | NO | The customer has no right to terminate a contract would the difference be of 5% or above but he has the right to go to courts in order to obtain a rebate on the price (which courts ordinarily agree to grant) of the percentage of difference | YES it depends on the difference. | YES If difference is more than 5% of plan. | YES conceivable usually /in practice warranty claims | If it is a substantial deviation, the consumer can terminate the contract. He also can claim compensation from his contract partner. | NO |

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| | | between the surface target and the real one, without taking into account any margin of uncertainty | | | | | |
| 6. If the built apartment differs from the designed one within the margin of error, will the customer have to pay extra when he/she receives more living area or will he/she receive a refund if the living area turns out to be less? | NO In the most contracts it is put that all differences in + or – has to consequences ... because buyer&seller knows the product | No known case of a customer having to pay any extra, if the living area exceeds what was promised. | NO | NO Client will pay price on promise of sale. no obligation to pay extra. | <u>will the customer have to pay extra (more):</u> No Consumer protection In the responsibility of the construction company <u>receive a refund (less):</u> Yes and No usually /in practice warranty claims | NO | NO |
| 7. Has your country established a norm to determine the amount of living area (eg. of the International Committee for Standardization)? | NO | YES ; several norms. No idea whether they are coherent with international standards. | YES | NO | YES 1.Residential Space Ordinance 2.Building code of the Länder | Some local municipalities (parts of Oslo, capital) has minimum size on apartments. | NO |
| 8. In your country, does an apartment's living area | YES | NO, the living area excludes any space occupied | NO | YES | YES depends on Safety, static of the | YES, specified in a Norwegian standard for space/area/v | Not applicable. |

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| include areas inside of the apartment, under the construction walls, which cannot be demolished by the buyer? | | by walls, could they be demolished or not. | | | building. Regulatory Law; Standards of static | volume calculation. | |
| 9. In your country, does an apartment's living area include areas inside the apartment, under the walls dividing the various rooms, which can be demolished by the buyer? | YES | NO, the living area excludes any space occupied by walls, could they be demolished or not. | NO | YES | YES Individual case assessment Possibly a building permit necessary Contact to the building authority | YES, specified in a Norwegian standard for space/area/volume calculation. | Not applicable. |
| 10. In order to measure the amount of living area, does your country include some other elements such as balcony areas or corridors areas? | YES | YES but for only a percentage of them and capped under a certain threshold. | YES | Balconies no - Corridors yes. | YES it is regulated in the Residential Space Ordinance | NO, specified in a Norwegian standard for space/area/volume calculation. | Not applicable. |

Conclusions

The collected data shows that in all 7 European countries which were surveyed:

- it is possible to sell apartments that have not yet been built;
- apartments are sold with reference to a particular area of the dwelling.

In most countries, usable area housing is administered by the sale of apartments with an accuracy of 1 m², while often lack the statutory provisions that would directly regulate this issue.

The issue which for many years is controversial in Poland is estimating the percentage of difference area built to the proposed in the buildings. At present the proposed wording of the provisions, and **so the adoption of 2% of the difference as a margin of error**, is shaped completely different in European countries and in compare to the other indicated countries, seems to be **the most rigorous solution**.

The margin of error for the difference in the area of housing, which are not yet built and the area really built in the countries surveyed is:

- 5%
- 10%
- **No indicated margin of error**

It is also worth noting that the vast majority of countries surveyed, where the built apartment differs from the designed within the framework of an acceptable margin of error for the area which is more, you will not have to pay extra.