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Changes to Law Allowing Developers to Terminate Off-Plan Sales Contracts

By Shahram Safai and Anna White | December 2017

On 16 November 2017, Law No. (19) of 2017 was gazetted which amends the procedures contained in Law No. (13) of 2008 on Interim Property Registration in Dubai. This law stipulates the procedures which developers must follow if a buyer breaches an off-plan sales contract.

The new law is an important development in Dubai and will assist developers who are facing a difficult real estate market and increasing buyer default.

What's the Key Change?

The new law has not drastically changed the existing procedures contained in Law No. (13) of 2008, but has rather built on them and provided timeframes within which a developer must return excess money to buyers who have defaulted.

Under the new law, if a buyer breaches its obligations under an off-plan sales contract:

- a. the developer must notify the Land Department and the Land Department will serve a notice on the buyer giving it 30 days to fulfill its contractual obligations; and
- b. if the buyer fails to fulfill its contractual obligations or reach an amicable settlement with the developer within the 30-day notice period, the Land Department may issue an official document stating that the developer has fulfilled his legal obligations and specifying the percentage of completion of the property; and
- c. after the developer receives this document from the Land Department, the developer may take any of the following actions, without approaching the court or pursuing arbitration:
 - i. if the percentage of completion of the real estate unit exceeds 80%, the developer may:
 1. continue with the performance of the contract concluded between the developer and the purchaser, retain the whole amounts paid and

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- request the purchaser to pay the outstanding amount of the contract price;
2. request the Land Department to sell the real estate unit by public auction so that the developer may collect the outstanding balance payable to the developer by the purchaser; or
 3. terminate the contract unilaterally, retain up to 40% of the price of the real estate unit specified in the off-plan sales contract and return any excess amount to the purchaser within one year of the date of termination of the contract or within (60) sixty days of the date of re-selling the real estate unit to another purchaser, whichever is earlier;
- ii. if the percentage of completion of the real estate unit is between 60% and 80%, the developer may terminate the sale contract unilaterally, deduct not more than 40% of the price of the real estate unit specified in the off-plan sales contract and return any excess amount to the purchaser within one year of the date of termination of the contract or within (60) sixty days of the date of re-selling the real estate unit to another purchaser, whichever is earlier;
- iii. if the developer has commenced construction work on the project as per the designs approved by the competent authorities and the percentage of completion of the real estate unit is less than 60%, the developer may terminate the contract unilaterally, retain up to 25% of the price of the real estate unit specified in the off-plan sales contract and return any excess amount to the purchaser within one year of the date of termination of the contract or within (60) sixty days of the date of re-selling the real estate unit to another purchaser, whichever is earlier; and
- iv. if the developer has not commenced the execution of the real estate development project for reasons beyond his control and without negligence on his part, the developer may terminate the contract unilaterally, deduct not more than 30% of the amounts paid by the purchaser and return any excess amount to the purchaser within (60) days of the date of terminating the contract.

Additionally, where the development project is cancelled by the Real Estate Regulatory Agency, the real estate developer must refund all payments received from the purchaser, pursuant to the procedures and provisions stipulated in the said Law No. (8) of 2007.

What's the commercial and practical impact?

Developers must follow the procedure set out in Law No. 19 of 2017 if they wish to recover from a buyer who has breached an off-plan sales contract. ■

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