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Off-Plan Sales: Risks and Rewards

By Shahram Safai, Richard Waind and Anna White | 16 April 2018

Whether buyers are looking to expand their real estate portfolio or buyers are simply looking to find their ideal home, great deals can be found in Dubai's off-plan real estate sector as developers face pressure to shift their inventory amid a concern that the market is over supplied.

However, it is critical that prospective buyers do their homework; work with a reputable broker and a reputable lawyer who understand the off-plan market in Dubai; and ensure that they purchase a quality off-plan investment.

This article discusses the risks and rewards of Dubai's off-plan real estate sector, and the legal protections afforded to off-plan buyers.

Rewards

Over the last few years off-plan buyers have had the opportunity to invest and make returns with minimal capital outlay. Investors, in particular, have been able to spread their investments and hedge their purchases over several projects in order to maximize future gains. And while off-plan investors do not see the immediate rental return from those investing in the secondary market, buyers of units in some new communities have been able to attract tenants at the expense of some older communities, which has helped with occupancy rates and attractive yields. The affordable sector in particular has seen strong returns with yields exceeding 8% in the last year in communities such as Jumeirah Village Triangle, Jumeirah Village Circle and International City.

For the end user (as well as the attraction of living in a 'box fresh' home), low first payments and attractive payment plans have brought home ownership within reach of many residents previously priced out of the secondary market due to the 25% deposit requirement. This has been an important factor in enabling the younger generation to take that all important first step on to the property ladder and has further driven strong demand in the affordable sector.

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Risks

While the Dubai Land Department (DLD) recorded that off-plan transactions were up 36% in 2017, there are signs in recent months that demand in the sector has softened with the pendulum slowly swinging back to the secondary market. A major concern for many is that recent off-plan demand has driven a surge in development, and the potential of significantly increased upcoming supply will have a negative impact on future values. Memories of the 2008/2009 market crash still loom large and the fear is that with 42,000 units under construction, where will the demand for these units come from?

It is clear that there is a large amount of supply in the pipeline, but delivery rates may not live up to expectations. Q1 of 2018 saw only approximately 3,500 units handed over, and while that will increase in the coming months, the supply of good quality projects may be more in line with future population projections. But while todays development may be catering for tomorrows population, there is a risk that in the short term poor quality projects may suffer loss in value and those buying off plan should choose their investment carefully.

Increased supply creates choice for end users both for the resale and rental of any off-plan investment and the savvy investor will have the requirements of the future occupier of the property firmly in mind when buying. Picking off-plan projects with attractive amenities and services such as schools, shops and recreational facilities, coupled with good transport links and infrastructure, will help future proof any off-plan investment. Build quality and the reputation of the developer are also important factors to consider, especially if you are hoping for the property to be handed over on time.

Legal Protections

Off-plan real estate investment in Dubai is governed by a set of real estate laws and regulations aimed at protecting buyers' interests, the most important of which are discussed below.

The interim registration law (Law 13 of 2008 (as amended)) requires all sales (and all other disposals) of off-plan units to be registered on the interim real estate register maintained by the DLD. If a sale is not registered, it is considered null and void.

The interim registration law (Law 13 of 2008 (as amended)) also governs the developer's right to terminate a sale contract for an off-plan unit in the event that the buyer falls into default, and sets out: (i) the termination procedure to be followed; and (ii) the monies that may be retained by the developer in the event of termination which is linked to the percentage of completion of the off-plan unit as follows:

- if the percentage of completion of the unit exceeds 80%, the developer may retain up to 40% of the price of the unit specified in the off-plan sale contract;
- if the percentage of completion of the unit is between 60% and 80%, the developer may retain up to 40% of the price of the unit specified in the off-plan sale contract;
- 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 retain up to 25% of the price of the real estate unit specified in the off-plan sale contract; and
- if the developer has not commenced the execution of the project for reasons beyond his control and without negligence on his part, the developer may deduct not more than 30% of the amounts paid by the buyer.

Furthermore, the trust account law (Law 8 of 2007) protects buyers by requiring developers selling off-plan units to be registered with the Real Estate Regulatory Agency (RERA), and to deposit all amounts paid by purchasers into an escrow account with an escrow agent accredited by the DLD. The amounts deposited in the escrow account are exclusively allocated for the purposes of construction of the particular real estate project (and directly related activities) and may only be withdrawn by the developer on application to RERA in accordance with the law.

Finally, pursuant to the jointly owned property law (Law 27 of 2007) and the Directions released in 2010, developers must disclose all relevant information pertaining to their off-plan development in a “Disclosure Statement” to prospective buyers as well as have a jointly owned property declaration describing the common areas and the rules and regulations associated with them including the calculation of service charges.

Although off-plan buyers can take comfort in the protections afforded by the legislation described above, we recommend that purchasers check that:

- the real estate project is registered with RERA;
- there is an escrow account for the real estate project;
- the percentage of completion of the real estate project and the expected date of completion;
- the developer is registered with RERA;
- the developer owns the land or there is a development agreement between the owner and the developer; and
- the developer has the required permits and approvals from the DLD and RERA to sell units off-plan in that particular real estate project.

Conclusion

Dubai’s off-plan real estate laws and regulations serve to increase investor confidence and attract more foreign investment.

With respect to the market, there are some excellent deals to be had from developers in Dubai today and off-plan enquiries remain high. However, today’s off-plan buyers should not expect immediate gains, but should shop around and choose a quality product that will deliver long term sustainable returns, or provide a stable, affordable home for themselves and their family.

Dubai remains an attractive proposition for domestic and international investors alike with globally high rental yields and relatively low prices per square foot. Dubai itself continues to attract hard working and entrepreneurial people from across the world and the market place is maturing as more people choose to settle and raise families in the UAE. There is much to be positive about regarding the future of the Dubai property market and the off-plan sector will continue to play a big role in such market. ■

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Better Homes

Before the Burj Khalifa, before the Burj Al Arab, before Dubai Marina was built, there was Better Homes. Our company was started in 1986 and is like all the best characters in the greatest stories - born of humble beginnings. Better Homes came into being when Linda Mahoney spotted a gap in the market, as back then, there was a lack of other professional estate agents operating in Dubai. Looking at this growing, ultramodern city today, that might be hard to believe, but it is true that a firm founded from a temporary desk in the corner of a dining room was once one of a handful of real estate agents in town. Since then, other real estate companies have arrived in their hundreds to cash in on the astonishing success of the UAE property market but we have been here since the beginning, growing alongside this extraordinary country and getting to know our market inside-out. Having started in residential leasing, we now offer a complete range of residential sales, a commercial sales and leasing division, property management, and short-term rentals. And every day, we look for ways to bring new and better services to our clients to keep our position as the UAE's market leading real estate company.

The key to our business is that right from the start, it was about finding places for people to live, so our business is simple, it is about people and their homes. It is true that today we do much more than that, but people and their homes will always be at the heart of what we do.

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