

inBrief



Off-Plan Construction Delays: Options for Resolution in Dubai

By Shahram Safai and Anna White | 27 November 2019

By and large the Dubai offplan real estate market is well regulated and developers complete construction by the “anticipated completion date” as set out in the Sale and Purchase Agreement, albeit often subject to the contractual right to extend such date for a further 12 months. In addition, purchasers can take comfort that the Real Estate Registration Agency (RERA) actively monitors the progress of construction works for each off-plan project in Dubai, and in most cases a copy of RERA’s audit report can be obtained from the Dubai Land Department’s website.

However, amid a sluggish real estate market and global economy, there have been instances of construction delays of some off-plan projects as developers face cash flow issues.

It is important that purchasers are aware of their rights in order to address these challenges in the event that they find themselves facing such delays.

In this inBrief we discuss the ramifications under law of such delays, and what a purchaser can do in the event a dispute.

The Law

A purchaser may apply to court to terminate the contractual relationship between the purchaser and the developer in the circumstances set out in Article 20 of Executive Council Resolution 6 of 2010. In the context of construction delays, the relevant circumstances are as follows: “*any other cases that may require termination of the agreement in accordance with general principles of law.*”

In addition, the Article 246 of the Civil Code requires that: “(1) *The contract must be performed in accordance with its contents, and in a manner consistent with the requirements of good faith.* (2) *The contract shall not be restricted to an obligation upon the contracting party to do that which is expressly contained in it, but shall also embrace that which is appurtenant to it by virtue of the law, custom, and the nature of the disposition.*”

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Practically, a purchaser should attempt to resolve such dispute with a developer amicably by lodging a complaint with RERA, failing which the purchaser can consider bringing court or arbitration proceedings (as the case may be) to enforce its rights.

Dispute resolution: Court, Arbitration

RERA: In the event a purchaser experiences construction delays, a complaint can be lodged with RERA. It is important to make RERA aware of any construction delays as, pursuant to Article 23 of Executive Council Resolution 6 of 2010, RERA has the power to cancel a project in cases of serious delay, including: “*if it is proven to RERA that the developer has no intention of implementing the project*” or “*if the developer fails to implement the project due to gross negligence*”.

Where a project is cancelled by RERA, the developer must refund all payments received from the purchaser pursuant to the procedures and provisions stipulated in Law 8 of 2007.

Arbitration: In the event of construction delays and if filing a complaint with RERA does not render results then the purchaser should look to the dispute resolution mechanism in the SPA, which is most commonly arbitration.

However, a purchaser will need to seek legal advice as to the strength of its arbitration claim, particularly as the SPA will often permit the developer to extend the “anticipated completion date” for a further 12 months, or excuse certain construction delays as events of force majeure.

Arbitration is beneficial as it is usually faster than court; it is private; and specialist arbitrators can be used to accurately determine a matter. In Dubai the most popular arbitration venues are before the Dubai Chamber of Commerce and Industry (DIAC) or the Dubai International Financial Centre/London Court of International Arbitration (DIFC/LCIA) Centre.

Court: If there is no arbitration clause contained in the SPA, then the purchaser must file its case with the Dubai courts. Again, a purchaser will need to seek legal advice as to the strength of the claim.

Proceedings are started by filing a claim in the relevant court office on payment of the required court fee. On application by the claimant, payment of court fees can be deferred in exceptional cases. The court fee depends on the value of the claim, and in Dubai has a maximum cap of AED 40,000. This fee is payable either on an application for provisional relief, or on filing the main lawsuit.

The claim must meet procedural requirements, include the names and addresses of the parties to the action, and include details of the claim. Documents in support of the claim are usually annexed to the claim and must be translated into Arabic. The court issues a summons with a hearing date endorsed on it for service on the defendant, with a copy of the claim and any supporting documents filed by the claimant.

Once an answer has been filed, the trial is adjourned for the claimant to respond. Further adjournments are given so that memoranda can be filed by the parties. Once the court believes that the case has been sufficiently pleaded, it reserves the matter for judgment. The entire proceeding is based on written submissions supported by documentary evidence. The court usually appoints an expert to assist it and usually accepts the expert’s report.

Conclusion

Further instances of construction delays with respect to some off-plan projects are likely to occur as developers face increasing cash flow issues amid a sluggish real estate market and global economy. Purchasers should be more aware than ever of their legal rights, potential remedies and developers’ responsibilities. ■

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