

DUBAI REAL ESTATE

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WHEN Dubai burst onto the international real estate scene in the early-2000s, many investors viewed their purchases as short-term, and bought with the intention that they would be re-sold well before construction was complete.

Now that the first wave of construction has been completed, and mindful of the lessons of the global economic crisis, investors in Dubai's real estate market are generally more sophisticated and have grown ready to take a long-term view.

There is a growing awareness that Dubai's real estate market is becoming bifurcated, with high-end properties in good locations increasing in price and the lower quality properties stagnating in price.

SERVICE CHARGE ARREARS

One of the factors that, in recent times, has had and will have the greatest impact on the value of real estate, has been the maintenance and management of common areas in the development.

Under Dubai's Jointly Owned Property Law 27 of 2006 (the "JOP Law"), the common areas in a development were removed from the control of the developer and placed under the control of an "Owners Association" comprising the owners of the units within the development.

In the Middle East, the concept that, after the purchase price has been paid for a piece of property, there should be ongoing service charge payments, is relatively alien. Partly for this reason, the levels of service charge recovery are quite low in certain developments.

Inevitably, if service charge recovery rates are low, it will not be possible for the Owners Association to maintain property to the standard that was intended. Over time, this could lead the lifespan of the development to be reduced, and, therefore, for the value of the units in that investment to fall.

The developments that tend to be the best maintained are generally the high-end, high-value developments. Of course, there is also a more limited number of such developments, as compared to the cheaper projects, and that limited supply has also led to price rises in the expensive developments.

The difficulties that have been experienced in recovering service charge at some developments have led to calls that the powers of the Owners Associations under the JOP Law should be clarified - including for example to make clear the extent to which services may be withheld from the owners and occupiers of units for which there are arrears.

CONSTRUCTION DEFECTS

Due to the extremely hot weather in Dubai, a failure to maintain a development can lead to any construction defects becoming apparent sooner than would otherwise be the case. This is leading would-be investors to view the effectiveness of their potential investment's service charge regime as an important factor to consider. Similarly, existing investors whose developments may be impacted by construction issues are presently investigating their rights.

The JOP Law states that the developer remains liable for 10 years from the date of the development's completion certificate to repair and cure any defects in the structural elements of the development notified to the developer by the Owners Association or a Unit Owner.

The JOP Law also explains that the developer remains liable for 1 year from the date of the development's completion certificate to repair or replace defective installations in the development, including mechanical and electrical works and sanitary and plumbing installations.

If there is conflict between a unit owner's purchase contract with the developer and the JOP Law, (for example if the contract tried to shorten either of the time-periods mentioned in the two above paragraphs), the JOP Law would supersede the contract on this issue.

Article 544 of the Federal Civil Code, in dealing with the concept of latent defects, states it is "permissible for a person to contract in his own name imposing a condition that rights are to ensure to the benefit of a third party if he has a personal interest, whether material or moral, in the performance thereof."

As such, depending on the wording of the construction contract between the developer and the contractor, the Owners Association and the unit



Shahram Safai at Afridi & Angell in Dubai

owners may be able to argue they are entitled to take direct action against the contractor who built the development for breaches of the contractor's obligations under the construction contract. Under the Federal Civil Code, the developer has a claim against the contractor and the supervising architect for ten years from the date of delivery of the work if either (a) the building suffers total or partial collapse or (b) there is a defect that threatens the stability or safety of the building. The contractor/supervising architect cannot contract out of this liability. The developer's remedy is compensation - and crucially the obligation to compensate applies even if (a) the building collapse/defect arises from a defect in the land or (b) the developer consented to the construction of the defective building. This strict liability may be important in years to come.

INVESTOR PROTECTION

One legacy of the global crisis is that most investors are limiting their sights on completed projects (with many also seeking to take advantage of so-called distressed sales of units bought at the top of the market in 2008, and whose buyers are now unable to make the final few installment payments).

At present, many commentators view the regulation of off-plan property sales in Dubai as being too developer-friendly. The Dubai Government has published a draft Investor Protection Law (the "Investor Law"), which could see a strengthening of the investor's position, which may lead to a boost in the off-plan property market.

Amongst other protections, the Investor Law would see sellers of off-plan property obliged to provide various warranties to purchasers including that the seller (a) has good title to the property and full power to transfer it to the purchaser and (b) will at its own expense enter into such documents and take such actions as may be necessary to give good title in the property to the purchaser.

Perhaps more importantly, the Investor Law would introduce the right for the purchaser of off-plan property to terminate the contract and to recover all amounts paid if the developer fails to complete the unit or handover possession within a specific period of the date set in the contract of sale as the estimated handover date, regardless of whether the contract for sale includes a provision allowing the developer to delay handover in any circumstances.

The introduction of the Investor Law would be a shift in power towards investors in Dubai's real estate market. Investment in off-plan property could become more attractive, and this could lead to price increases across the board. ■

About the author:

Shahram Safai is a Partner and Head of the Real Estate department at the law firm of Afridi & Angell.

ssafai@afриди-angell.com

Afridi & Angell
Emirates Towers - Level 35
Sheikh Zayed Road
Dubai, United Arab Emirates
Tel: +971-4-330-3900
Fax: +971-4-330-3800
www.afриди-angell.com

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