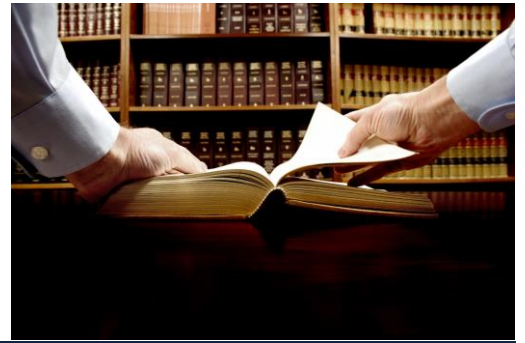


## inBrief



### Key clauses in Sale and Purchase Agreement for off-plan properties in Dubai

By Shahram Safai and Eoin O'Flaherty | 16 March 2023

#### Introduction

Off-plan properties are those which are sold in advance of completion and can offer attractive payment plans and potentially high returns on investment. Therefore, the acquisition of off-plan property has always been a favored form of investment for those seeking to profit from the booming Dubai Real Estate market.

However, it is vital for buyers to understand the risks involved. The governing document that is put in place between developers and buyers to regulate the purchase of off-plan property is a Sale and Purchase Agreement (SPA).

In this article we will examine a number of key clauses usually present in a SPA to which buyers should pay particular attention.

#### Key clauses

##### 1. Completion and Risk

The completion clause present in a SPA typically outlines the date upon which a developer anticipates that a property will be completed. Generally, such a clause will permit a developer to vary this date for specific reasons if required (typically for a period of twelve months). A buyer of off-plan property should keep in mind such obligations under the SPA including financial obligations when reviewing the completion clause as it is necessary for these to be fulfilled by the completion date specified in order for a buyer to take possession of a property

The passing of risk is also dealt with within a completion clause in a SPA. It is vital that buyers of off-plan property understand fully at what point they will assume rights and responsibilities including risk in relation to a property. The passing of risk occurs upon the handover of a property to a buyer.

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## **2. Purchase Price**

A SPA will contain a clause outlining the amount and timing of the purchase payment required for the buyer to acquire a property. A payment schedule is typically attached which a buyer of off-plan property should ensure that they can adhere to as a failure to maintain these payments may result in the termination of the SPA and the forfeiture of sums paid to a developer. This clause may also set out the consequences of a late payment, which would usually involve the application of interest.

## **3. Handover**

A handover clause will specify the condition in which an off-plan property will be handed over to a buyer. A SPA will usually detail the quality of finishes, fixtures and fittings that a developer should provide as well as outlining the process in relation to any defects present in the property and the repair of same. Typically, buyers of off-plan property are permitted to inspect a property in order to identify any deficiencies present. The handover clause is essential to ensure that the buyer receives the property in the agreed condition.

## **4. Restrictions on Disposals**

Buyers of off plan property do not receive a full title deed to a property until completion occurs. Until such time, they acquire the right to own a property once it is completed provided that they comply with their obligations as contained in the relevant SPA. Many investors often seek to sell off-plan properties during the construction process to take advantage of spikes in property prices. However, it is important to note that developers will usually include restrictions in a SPA that will limit a buyer's right to dispose of an off-plan property during construction. Such restrictions will usually be linked to a payment of a certain percentage of the overall purchase price for an off-plan property.

## **5. Termination**

The termination clause contained in a SPA will outline the circumstances under which a SPA may be terminated by either party and the consequences of such termination. Termination usually consists of a failure to meet contractual obligations (such as payment), inability to secure financing, insolvency of one of the parties, or any other specified circumstances. Typically, such clauses are drafted in favour of the developer and a buyer of off-plan property should review these clauses carefully to ensure that they understand the circumstances that could give rise to a termination of a SPA and their ramifications.

## **6. Dispute Resolution**

A dispute resolution clause outlines the process for resolving any disputes that may arise between the buyer and the developer. The SPA should specify the method of dispute resolution, such as court, arbitration, mediation, or other forms of alternative dispute resolution. The dispute resolution clause is essential to provide a clear process for resolving any disagreements between the parties. Buyers of off-plan property should be mindful of this clause and ensure that the dispute resolution mechanism prescribed is acceptable.

## **Conclusion**

Acquiring off-plan properties can be a lucrative form of investment, however it is important that buyers conduct the essential due diligence on the specific project, the developer and the SPA before making such an investment.

Given the potential risks involved in such an investment, potential buyers of off-plan property in Dubai should seek the advice of a qualified lawyer in reviewing and explaining the terms and provisions of an SPA prior to signing. ■

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