

## inBrief



## The Unprecedented Rains and Floods in the UAE - Who is responsible for all of the damage?

By Shahram Safai, Doneen Ennis and Anita Hajynia | 1 May 2024

Over a period of less than 24 hours on the 16<sup>th</sup> of April, the United Arab Emirates experienced its heaviest rainfall since records began 75 years ago, with sources recording a years' worth of rain falling in one day. The record-breaking rains created destructive flooding and chaos. Properties in the UAE were under attack by natural elements – rain, wind and flood. Many suffered from severe flooding, rising groundwater, and water through the walls and windows as well as through roofs. Whilst many parts of the UAE have now returned to normal, there are a number of neighbourhoods such as the Mudon development in Dubai which are still under water, including numerous luxury properties. Further rains and floods are also predicted for the next few days. Pricing for UAE real estate has now added another factor which will determine real estate valuation: the capability to withstand/susceptibility to rain, wind and flood (elevation, drainage, access, waterproofing).

But who do owners turn to? Who is at fault and liable for such repairs? Many homeowners do not have insurance. Can homeowners look to developers, master developers and building management companies for responsibility? Some developers have already stated that they will cover all costs necessary to repair communities affected by the flooding, including addressing any structural damage, restoring affected properties, and any additional restoration works. But is this a gesture of goodwill, or are they obligated to do so?

### Are Developers responsible?

- **Developer's liability - Article 40 of Law No. (6) of 2019 Concerning the Jointly Owned Real Property Ownership (JOP Law):**
  - **Article 40 (a)** - Developers remain liable for a period of 10 years from the date of the completion certificate of the project being issued for structural defects.
  - **Article 40 (b)** - Developers remain liable for a period of one year from the date of the handover of the unit to the owner for repairing or replacing defective installations, including mechanical, electrical, sanitary and sewerage installations and other similar installations.

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Owners may (subject to the time limitation period) be able to rely on the one-year and 10-year warranties as provided under the JOP Law. Owners/buyers should also check what if any, other warranties were provided to them on completion by the Developer. Owners may be able to hold developers liable for failure to comply with building construction and maintenance standards, including lack of sufficient and/or enough sump pumps for drainage.

In turn, developers may be able to rely on warranties provided to them by master developers, contractors and architects. Developers may rely upon the UAE Civil Code, Articles 880-883 and the 'Decennial Liability' period, which consists of a 10-year liability period for structural defects. The developer may hold the architect and contractors liable for structural defects, and potentially towards wider design defects.

### **Are Master Developers responsible?**

With owners paying service charges to master developers for community services, there are obligations owed by the master developers to these owners. Questions arise regarding the proper design and maintenance of properties and surrounding community areas, including infrastructure such as roads and drainage.

### **Are Building Management companies responsible?**

- **Article 18 of JOP Law:**
  - For most real estate properties/developments, either the developer, or an appointed management company shall manage, operate and maintain the community, and where applicable common areas of the property. Such maintenance includes sewerage and drainage.
- **Article 41 of JOP Law:**
  - Management companies and developers must also ensure that they have sufficient insurance in place to cover maintenance and reconstruction, in case of fire, damage or destruction for any reason whatsoever, and owners, contribute towards the insurance premiums through their service charges.

Developers, master developers, architects, engineers and contractors will argue that the rain and the floods were a force majeure event and that they cannot be responsible for an act of God. But what if the design or maintenance is not up to standard and damage would have been far less had it been designed or maintained properly? What if the developers, master developers, building managers, architects or engineers did not abide by their obligations under the law which caused or partially contributed to the damage suffered by real estate owners? What about those owners who had already raised concerns with regard to leaks during heavy rainfalls, sewerage and drainage issues but nothing had been done to address those concerns?



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The above considerations regarding developers', master developers', building management companies', architects', engineers' and contractors' liabilities are relevant in determining who may be responsible for paying for some or all of the damage. Who is liable and who pays will be the next major consideration in this saga.

With the April 16<sup>th</sup> unprecedented rainfall and floods, many have called for changes in the current construction and development requirements of projects including the increase and improvement of sewerage and drainage systems. The government has already announced as part of the Dubai Economic Agenda D33, that it has pledged AED 80 billion towards a new and updated sewerage system. The government has been fast to react by stating that developers and building management companies should restore and repair properties and communities at no additional costs, and where needed, assist with alternative housing, pest control and additional security. Master developers and developers will need to carefully consider whether they should be investing in better drainage in their relevant developments. The question will continue to be whether this cost should be borne by the owners, and if so, will owners see a future hike in their service charges? ■

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