

Dubai amends Interim Registration Law

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Given the steady flow of consistent world-class leading developments in Dubai, Dubai has, and will always continue to be, a market leader in the world for the sale of units off-plan. The Government of Dubai has always recognised the importance of the need to regulate the sale of units in developments off-plan so as to protect the interests of developers and investors (both financiers and purchasers), with the sale of units in a project off-plan being subject to Law No. 13 of 2008 Regulating the Interim Real Estate Register in the Emirate in Dubai, as amended (the 'Interim Registration Law').

Over the course of the last 13 years and as the property market in Dubai continued to strengthen, the Interim Registration Law has been amended on a number of occasions, with the most recent amendment taking place on 24 November 2020 with the passing of Law No. 19 of 2020 amending certain provision of Law No. 13 of 2008 ('Law No. 19 of 2020'). Law No. 19 of 2020 was published in the Official Gazette on 13 December 2020 (and is therefore now in force) and it is important that developers, purchasers and other stakeholders are aware of the changes made to the Interim Registration Law.

Rights of developer - retention of purchase price

As the Interim Registration Law has evolved, the ability for a developer to retain a portion of the purchase price paid by a purchaser upon termination of an off-plan sale and purchase agreement ('SPA') due to a default by the purchaser has been amended on a number of occasions.

Rights of developer restricted

Prior to the introduction of Law No. 19 of 2020, Article 11 of the Interim Registration Law was amended on two prior occasions. Firstly, by Law No. 9 of 2009 and secondly, by Law No. 19 of 2017, with the most recent amendment, being made by virtue of Article 1 of Law No. 19 of 2020.

Prior to the introduction of Law No. 19 of 2020, a developer was permitted to retain up to thirty per cent of the purchase price upon termination regardless of whether the developer had commenced construction of the project. However, this is no longer the case, with Law No. 19 of 2020 amending Article 11 of the Interim Registration Law to confirm that a developer must return all amounts received from a purchaser in the event that it has not commenced works as at the time of termination.

Subject to our comments below, it is worthwhile noting that the process for termination of an SPA and the threshold requirements (and associated rights) for projects that do not fall within Article 11(b) of the Interim Registration Law (as amended by Law No. 19 of 2020), remain unchanged.

Rights of developer broadened

Under the Interim Registration Law, the right for the developer to retain a portion of the purchase price upon termination of an SPA, was linked to the percentage of completion of the “Real Property Unit”, being that particular unit in the project that was the subject of the relevant SPA.

The link of the percentage threshold to completion of that particular unit, rather than the project as a whole, could have been viewed as a barrier for a developer to terminate an SPA as the developer may not have been legally entitled to retain part of the purchase price – for example, even if a project was 60 per cent completed, the developer may have been precluded (and therefore deterred from terminating an SPA) from retaining part of the purchase price, if construction of that unit was yet to commence due to it being on a high level.

The position in this regard has since changed, with the threshold for completion now linked to completion of the project as a whole, rather than the unit that is subject to the relevant SPA. In contrast, the broadened rights of the developer under Article 11 emphasise the need for purchasers to carefully consider whether they will have the ability to perform all of their covenants under the SPA, be they financial or non-financial in nature. Even if a purchaser is in default (or is at risk of going into default) of its obligations under their SPA, we would strongly recommend that a purchaser enters into discussions with the developer with a view to achieving an amicable solution before a developer exercises its rights under Article 11 of the Interim Registration Law (as amended by Law No. 19 of 2020).

Affirmation of off-plan contracts cancelled by the DLD

Importantly, Law No. 19 of 2020, amends Article 11 to include an additional sub-clause which seeks to affirm the enforceability of, and restrict the ability to challenge, any cancellations done prior to the introduction of Law No. 19 of 2020, provided that such cancellation was conducted in accordance with the “*applicable law*”.

It will be interesting to see how the Courts of Dubai will interpret the inclusion of this sub-clause in Article 11 and we will keep the readers updated in this regard.

Moving forward

Should you have any queries regarding the Interim Registration Law (as amended by Law No. 19 of 2020) and how it impacts your project, or your rights under an SPA, we would be happy to assist and provide you with advice as to your options.

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