

Special judicial committee to handle Dubai's cancelled Real Estate Projects

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According to Article 9 of the New Decree, it shall come into force from the date of its publication in the Official Gazette. As at the date of preparing this article, the New Decree has not been published.

Background

Article 11(5) of Law No. (13) of 2008 Regulating the Interim Real Estate Register in the Emirate of Dubai, as amended by Law No. (9) of 2009, gave the Real Estate Regulatory Authority ("RERA") authority to cancel a real estate project based on a reasoned technical report.

Executive Council Resolution No. (6) of 2010 approving the executive regulation of Law No. (13) of 2008 (the "Resolution") sets out further details of the manner in which RERA is authorised to cancel a real estate project. In particular:

Article 23 of the Resolution sets out the nine (9) grounds pursuant to which RERA may resolve to cancel a real estate project, as follows:

1. If the developer fails, without any good reason, to commence the construction works although the developer has already obtained all the required approvals from the relevant authorities;
 2. If the developer commits any of the crimes as provided under Article 16 of Law No. 8 of 2007 concerning the escrow accounts for real estate developments in the Emirate of Dubai;
 3. If RERA confirms that the developer has no serious intention to perform the project;
 4. If the plot for the intended project is withdrawn due to the breach by the sub developer of any of its contractual obligations with the master developer;
 5. If the plot is fully affected by planning or re-planning projects undertaken by the relevant authorities in the Emirate;
 6. If the developer fails to perform the project due to its gross negligence;
 7. If the developer expresses its intention not to perform the project for reasons satisfactory to RERA;
 8. If the developer declares its bankruptcy; or
 9. Any other reasons as determined by RERA.
- Article 24 of the Resolution gives the developer of a real estate project seven (7) working days to appeal a resolution by RERA to cancel the project. RERA has a further seven (7) working days to determine the appeal. If RERA accepts the appeal and allows the project to proceed, it may establish terms and conditions that the developer must meet, which terms and conditions the developer must accept in writing, in order to annul the resolution to cancel the project. However, if RERA rejects the developer's appeal, the determination is final and RERA shall proceed to cancel the project.
 - Article 25 of the Resolution sets out the steps that RERA must follow immediately after resolving to cancel a real estate project. Accordingly, RERA must first prepare a technical report setting out the reasons for the cancellation and notify the developer of the cancellation resolution. Next, RERA must appoint an auditor, at the cost of the developer, to review the financial position of the project to confirm the amounts paid to the developer or deposited in the project's escrow account, as well as the amounts spent. Any funds available in the escrow account are to be refunded to purchasers within fourteen (14)

days of the date of cancellation of the project.

- Article 26 of the Resolution provides that if there are insufficient funds in the escrow account to fully refund the purchasers, the developer must pay the shortfall to purchasers within sixty (60) days from the date of cancellation of the project, which period can be extended at the discretion of RERA.

Finally, Article 27 of the Resolution provides that if the developer fails to repay purchasers within the period established pursuant to Article 26, then RERA “shall take all the required procedures to secure the rights of the purchasers, including the reference of the issue to the competent judicial authorities”.

The special judicial committee (the “New Judicial Committee”) that is to be established pursuant to the New Decree will be the ‘competent judicial authority’ referred to in Article 27 of the Resolution.

Provisions of the New Decree

Firstly, it is important to note that the New Judicial Committee will only be concerned with real estate projects that have been cancelled by RERA pursuant to the procedures outlined above – the New Judicial Committee will not be involved at all in disputes arising between developers and purchasers in relation to real estate projects that have not been cancelled. In particular, Article 2A of the New Decree provides the New Judicial Committee the following powers:

1. To consider and decide such issues, demands and claims that may arise between the real estate developers and the purchasers, whose subject matter or cause is cancelled real estate projects.
2. To liquidate real estate projects cancelled under a final resolution to be issued by the Real Estate Regulatory Authority, in accordance with the provisions of the Law No. 13 of 2008 and its executive regulation, and to settle the relevant rights upon deducting the liquidation expenses.
3. To consider all executive proceedings, complaints and grievances whose subject matter or cause is cancelled real estate projects.

To assist in the performance of its duties, Article 2B of the New Decree provides that the New Judicial Committee may do any of the following without limitation:

1. Seek the assistance of experts and consultants and in particular from the Dubai Lands Department.
2. To appoint auditors at the cost of the developer to audit the financial position of the cancelled real estate project and to verify the amounts paid to the developer by the purchasers or deposited in the escrow account of such project and the amounts spent.
3. To issue such orders to the trustee of the escrow account of the project or the developer, in any issue in connection with the liquidation of the project, including refunding the amounts deposited in the account or paid by the developer to the relevant persons.
4. To take all the required procedures to secure the rights of the purchasers.

The New Judicial Committee will consist of one or more panels of judges from Dubai Courts. Each panel must have at least three (3) members (Article 1).

Article 3 of the New Decree establishes the exclusive authority of the New Judicial Committee in relation to cancelled real estate projects in the Emirate of Dubai. In particular:

1. All courts in the Emirate of Dubai, including the Dubai International Financial Centre Courts, are prohibited from hearing any matter concerning a cancelled real estate project, and any existing cases are to be referred to the New Judicial Committee to handle; and
2. Judgments issued prior to the effective date of the New Decree by any court in the Emirate of Dubai, including the Dubai International Financial Centre Courts, in connection with the liquidation of a cancelled real estate project must be referred to the New Judicial Committee for consideration.

Judgments, orders and resolutions issued by the New Judicial Committee shall be final and binding, not subject to appeal and can be enforced by the Execution Section of the Dubai Courts (Article 5).

Finally, it is worth noting that the liquidation procedures of real estate projects together with all demands, claims and issues handled by the New Judicial Committee are exempt from court fees (Article 7).

Future Developments

We will report further on the implementation of the New Decree when the New Judicial Committee has been established and further details of its modus operandi are available.