

Regulating Real Estate Development in Qatar

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It is no secret that Qatar is currently undergoing a major construction boom. It has been reported that Qatar intends to invest an estimated USD 200bn on construction projects and USD 140bn on transportation infrastructure over the next five years. Construction is underway to build new stadia, re-develop the roads, construct a railway system as well as new shopping malls, public open spaces, tourist attractions such as museums and galleries, together with expansion of the hotel industry and the building of housing and apartment towers to accommodate the expected influx of expatriate workers.

As part of the government's initiative to attract investment into the real estate sector, Law No.6 of 2014 (the "Real Estate Development Law"), has been enacted to regulate real estate developers. Prior to the Real Estate Development Law, the legislative framework in Qatar did not comprehensively deal with issues relating to the sale of units in real estate projects that were under construction ("Off-Plan Units").

The Real Estate Development Law is now in force and was published in the Official Gazette on 7 April 2014. Article 37 of the Real Estate Development Law provides that real estate developers, contractors and sellers of Off Plan Units are expected to become compliant with the Real Estate Development Law within six months of it coming into force. This article sets out the key elements of the new law.

Licenses for Developers

The Real Estate Development Law requires that any entity carrying out real estate development must obtain a specific licence ("Developers Licence") from the designated department of the Ministry of Economy and Commerce (the "Department"). Both Qatari nationals and companies incorporated in Qatar may apply for such a licence. Significantly, a company incorporated outside Qatar may also apply for a Developers Licence provided that the scope of its activities is restricted to areas where non-Qatari nationals are permitted to own properties. Article 29 of the law states that those who practice real estate development works without a licence may be prosecuted and sentenced to a term of up to one year's imprisonment or fined up to 50,000 Qatari Riyals, or a combination thereof.

The Department is required to establish a Real Estate Developers Register to record the names and details of entities that have been provided with a Developers License. Article 7 lays down specific obligations on developers including the requirement to commence and to complete construction works as specified in the sale and purchase contract with its customer. The Department has the authority to revoke the Developers Licence on certain grounds including where the developer has failed to commence work within six months from the date on which permission was granted for off-plan sale of units. Developers should be mindful that failure to commence project works once permission is granted also carries a fine of up to 200,000 Qatari Riyals.

Issuance of Strata Title

The developer is required to submit to the Department an application to create strata title for the project being developed before units in the project can be sold on an off-plan basis. The application should be accompanied by the relevant architectural plans, engineering drawings etc and the strata title will be issued in collaboration with the Ministry of Municipality and Urban Planning.

The Real Estate Department at the Ministry of Justice (the “Real Estate Department”) is to maintain an interim register for recording details of strata title (the “Interim Register”). The details of each Off-Plan Unit will be recorded in the Interim Register including the details of each transaction (sale, purchase, judgment, mortgage) relating to that Off-Plan Unit. If a transaction relating to an Off-Plan Unit is not recorded in the Interim Register, it shall be invalid. The Real Estate Department is required to issue a preliminary title deed for each Off-Plan Unit (“Interim Title Deed”). Once the project is completed, the Interim Title Deed is converted to a regular title deed.

Sale of Off-Plan Units

The developer may only sell Off-Plan Units after obtaining the consent of the Department. Article 10 sets out the requirements for obtaining such consent. These requirements include creation of the strata title for each Off-Plan Unit, opening of the Escrow Account (discussed below) and submitting the cash flow forecasts for completion of the project along with construction milestones. In addition, any promotional material relating to the sale of Off-Plan Units will also require the consent of the Department.

Escrow Account

The Real Estate Development Law requires the developer to open an escrow account for each project (the “Escrow Account”). The purchase price paid by customers for purchasing Off-Plan Units is to be deposited directly into the Escrow Account. In addition, the proceeds of any financing obtained for the project is also required to be deposited into the Escrow Account.

The withdrawal of monies from the Escrow Account is only permitted based upon achieving construction milestones and subject to a schedule approved by the Ministry of Municipality and Urban Planning. Withdrawals may only be made once 20% of the project has been completed and such withdrawals may be made towards payment of construction costs, purchase costs of land and marketing expenses. Notably, the Escrow Account may not be provided as security for financing obtained by the developer for the project.

Real Estate Dispute Resolution Committee

The Ministry of Economy and Commerce will establish a Real Estate Dispute Resolution Committee to hear disputes arising from the Real Estate Development Law and from real estate projects. We expect that purchasers who have grievances regarding delay in completion of projects, other breaches of the sale and purchase agreements and maintenance fee, will refer matters to the Real Estate Dispute Resolution Committee.

Impact on Financing Real Estate Projects

Under Article 25 of the Real Estate Development Law, the developer is required to obtain the consent of the Department prior to obtaining the financing for a real estate project. The following are the conditions to be satisfied by the developer to obtain such financing:

- financing can only be obtained where there are unsold Off-Plan Units in a project i.e, there should be a number of units that have not been booked by purchasers as this is relevant in determining the quantum of the loan;
- the aggregate amount deposited in the Escrow Account should exceed the value of the construction works that has been completed. The amount of construction works that has been completed shall be certified by a consultant;

- the quantum of the financing obtained should not exceed the value of the un-sold (or un-booked) Off-Plan Units; and
- the developer is required to submit a statement of the Escrow Account.

[Note: the quantum of the loan will also be determined by the Instructions issued by the Qatar Central Bank]

Interest and Principal Payments through Escrow Accounts

While the Real Estate Development Law does not address this issue, our experience in other GCC countries that have implemented similar regulations has been that the Department may permit interest to be serviced from the Escrow Account.

Currently, Article 20 states that withdrawals from the Escrow Account shall be used only for payment of construction costs, payments for the plot on which the project is being constructed and project marketing. However, in other jurisdictions, developers typically include interest payments in the cash flow statements submitted for approval to the authority.

Mortgage over Project Land and Off-Plan Units

The banks providing financing for the project can take a mortgage over the project land subject to the Department approving the financing (discussed above). Article 25 contemplates the taking of a mortgage over the project land. Having said that, the rights of the mortgagee will be subject to the rights of those customers that have purchased or booked Off-Plan Units in that project. Upon enforcement of the mortgage, the purchaser of the project (in a public auction) will take over the project. However, the rights of the owners of the Off-Plan Units will not be extinguished as a result of the sale of the project.

In other jurisdictions, we have seen banks placing restrictions on the developer from selling further units without their consent in order to maintain the value of the project at the time of enforcement.

In cases where the developer has defaulted and the financing is being restructured, the banks have taken mortgages over Off-Plan Units as a condition of continuing the financing.

Assignment of Escrow Accounts

Article 24 restricts creation of any security over the Escrow Account. The purpose of this is to ensure that the proceeds of the Escrow Account are used for completion of the project. However, once the development is completed, any residual monies in the Escrow Account can be used to pre-pay the financing obtained by the developer.

Conclusion

The Real Estate Development Law now provides a framework for the protection of purchasers of Off-Plan Units and seeks to ensure that the proceeds of sale of Off-Plan Units are utilised for the construction of the project. As a result of the changes introduced by the Real Estate Development Law, the purchasers of Off-Plan Units now have rights (rights in rem) in the project land and not just contractual rights under the sale and purchase agreements. Accordingly, banks providing finance for the construction of real estate projects would be impacted by the rights of such purchasers at the time of enforcement of their mortgage over the project land. Further, as a result of the escrow mechanism introduced by the Real Estate Development Law for receipt and disbursement of purchase monies, banks providing finance will no longer have a first right of recourse against the receivables arising from sale of the Off-Plan Units.