

Resolving Stalled Real Estate Projects in Bahrain

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The government of Bahrain has taken steps to resolve real estate projects that have stalled by issuing Decree by Law No. 66 of 2014 'Concerning Adjustment of Non-performing Real Estate Development Projects' (the "Stalled Projects Law"), which came into effect on 5 December 2014 (the "Effective Date").

Application and purpose of law

The Stalled Projects Law applies to real estate development projects for which units have been sold off-plan and the developer of the project (the "Developer") has received payments towards the purchase price, and where execution of the project has ceased as of the Effective Date to the detriment to Bahrain's national economy (a "Stalled Project").

Resolution No. 1 of 2015 'Defining Stalled Projects', which was issued on 12 February 2015, further clarifies the definition of a Stalled Project by providing that a project will be deemed to be a Stalled Project if one or more of the following circumstances apply:

- if it is evident that the Developer is not taking the execution of the project seriously
- if the Developer has not, without an acceptable excuse, commenced construction of the project despite obtaining all necessary licences and approvals
- if the Developer has failed to execute the project due to gross negligence.

The Stalled Projects Law allows Stalled Projects to be varied so that they can be completed or cancelled if completion is not feasible.

The Board's review

Initially, a committee formed by the Council of Ministers (the "Board") will review a Stalled Project that has been referred to it by the Council of Ministers. The Board's review will determine whether to refer the Stalled Project to the Committee on Adjustment of Non-performing Real Estate Development Projects (the "Committee"), which is a committee with judicial jurisdiction comprising three judges of the High Civil Court of Appeal and two experts.

The Committee's review

Following referral by the Board, the Committee will urgently review the Stalled Project and take action to enable the Stalled Project to be varied or cancelled, if necessary. In performing this function, the Committee can:

- investigate, or appoint a relevant body to investigate, the financial, administrative and technical aspects of the Stalled Project
- refer the matter to the Public Prosecutor if the Committee suspects criminal activity (although referral to the Public Prosecutor will not preclude the Committee from proceeding with its review of the Stalled Project)
- take provisional and conservatory measures
- hear witnesses and appoint experts and auditors

- request all relevant data, information, documents and instruments relating to the Stalled Project.

The Developer's proposal

The Committee can grant the Developer a maximum period of one month to provide a proposal for varying the Stalled Project so that it can be completed (the "Proposal"). The Committee may accept, modify or reject the Proposal for any reason including if the Proposal is too difficult to implement.

If the Committee accepts the Proposal, the Committee will grant the Developer a period of up to three months (which the Committee can extend for a further three months) to enable the Developer to reach agreement with the majority of stakeholders in the Stalled Project in relation to varying the Stalled Project. If the Developer and the stakeholders reach a consensus, they will enter into an agreement, which will become binding after the Committee ratifies it. Thereafter, the Committee will, or will appoint another party to, oversee execution of the agreement.

Additionally, if the Committee determines that a government entity must take measures that would contribute to the variation of the Stalled Project, the Committee can submit its recommendations in this respect to the Board so that the necessary measures can be taken.

The Committee's decision

If an agreement is not reached during the periods mentioned above, the Committee will make a final decision in relation to the Stalled Project (the "Decision") within eighteen months from the date when the Stalled Project was referred to the Committee. In reaching its Decision, the Committee may take and adopt any of the following procedures as it deems appropriate:

- Replace the existing board of directors for the Stalled Project with a new board of directors in circumstances where the Developer has not been cooperative, management of the Stalled Project has been inefficient or the Developer has not reached agreement with the stakeholders, and those stakeholders, particularly purchasers, are exposed to financial loss.
- Inform the Survey and Land Registration Bureau that it cannot register a transfer, lien or mortgage in relation to the land on which the Stalled Project is situated until the Stalled Project is finally varied.
- Offer the Stalled Project to another investor to complete, after taking into consideration the interests of the Stalled Project and the investors in the Stalled Project, particularly the purchasers. The new investor will be required to supply guarantees to complete the Stalled Project with the least losses possible. Priority will be given to the financing investors of the Stalled Project.
- Merge some Stalled Projects if there is no new investor available, taking any procedures that the Committee deems appropriate in this respect.
- Sell the Stalled Project at a public auction and deposit the sale revenue with the treasury of the Ministry of Justice and Islamic Affairs. The sale revenue will be distributed to all creditor stakeholders proportionately with their respective shares, and all debts shall be equal in rank. The purchaser of the Stalled Project will be given a copy of the Decision, which the purchaser will be required to submit to the Survey and Land Registration Bureau in order to register title to the land in the purchaser's name. In this respect, the Committee's Decision will be deemed to be the title deed for the purchaser.
- Adopt any other means to achieve completion of the Stalled Project.

The Committee must make its Decision by a majority vote of the Committee members. In the case of a tied vote, the Committee's chairman will have the casting vote.

A Decision of the Committee will be final and will serve as a court judgement once the High Civil Court of Appeal clerk's department has attached the executory formula to the Decision. A party may appeal the Decision to the Court of Cassation within 10 days from the date the Decision is published in the Official Gazette.

Impact on court cases and claims

From the Effective Date, no new cases can be filed before the Courts of Bahrain in relation to matters that the Committee can determine under the Stalled Projects Law. Further, all cases that were filed with the Courts of Bahrain before the Effective Date in respect of matters that the Committee can determine under the Stalled Projects Law will be temporality suspended for eighteen months to allow the Committee to review and vary the Stalled Project, if necessary.

The Committee's Decision will not prevent a claimant from seeking compensation from a Developer; however, any claims relating to a Stalled Project will not be heard until after the Committee issues its Decision.

Penalties for non-compliance

Any person who deliberately hides data, information or documents from the Committee, deliberately supplies incorrect data, information or documents, or acts or fails to act in a manner that would hinder the Committee from acting in its full capacity could be imprisoned for a term between one year and five years or fined between 10,000 Dinars and 30,000 Dinars, subject to any more severe penalty specified in the Penal Code or any other law.

Conclusion

The Stalled Projects Law is a welcome development that should achieve its aim of eliminating Stalled Projects in Bahrain and increase investor confidence in the Bahrain property market. The Committee's broad powers will enable it to swiftly take action tailored to each Stalled Project having regard to the interests of Developers, financiers, purchasers and other stakeholders.