

Property Development in Bahrain – Licences and Escrow Accounts

by Alastair Drummond - a.drummond@tamimi.com -

September 2015

In an attempt to restore investor confidence in the real estate sector, the Kingdom of Bahrain has recently introduced a raft of measures designed to regulate its property development industry. Law No. 28 of 2014 on real estate developments (the “Law”), issued in August last year, set out the overall framework of this new regulatory regime. The Law includes provision for setting up an authority to regulate property development in Bahrain. An executive regulation (the “Regulation”) issued under the Law in May this year sets out the functions of the new regulator. The Regulation operates at two levels: it regulates both the developer and each project undertaken by that developer, and this article will discuss the application of the Regulation to them.

Developer’s Licence

Any developer wishing to undertake property development in the Kingdom must submit an application to the Ministry of Works, Municipalities Affairs and Urban Planning (the “Ministry”) in the prescribed form. Licenses will only be issued to entities which:

- are competent to undertake property development
- are of good reputation
- have not been convicted of any crime involving “moral turpitude”
- have not been adjudged bankrupt
- are registered in the commercial registry (i.e. they must be a corporate entity).

The Ministry has 60 days to consider an application for a development licence. Once awarded, a development licence is valid for five years. However, a licensed developer can only undertake real estate developments in Bahrain if it has also been entered on the register of developers and has been granted a certificate of fitness to practice, for which a further application is required.

Development Licence

A licensed developer holding a certificate of fitness to practice can only commence work on a project after the plans for that project have been approved by the Ministry and a licence for that particular development has been issued. To apply for a licence, a developer must make an application to the Ministry in the prescribed form and submit the following documents:

- the title deeds to the property to be developed
- the development licence and the building permit for the project issued under Law No. 13 of 1977 in regard to building regulations
- an undertaking from the main contractor and sub-contractors to start work on the project within the period specified in the licence (if any)
- a letter from a consultant engineer setting out the estimated value of the project
- an undertaking from the developer to retain the ownership of the communal areas of the project
- if the project is being built on reclaimed land, the reclamation approval from the technical services

- directorate at the municipality where the land is located
- the form of sale contract between the developer and a buyer
- construction and architectural designs approved by the technical services directorate at the municipality where the land is located
- a letter from the project account manager confirming that the developer has deposited a sum equivalent to 20% of the estimated value of the project (including the land acquisition cost) in the project escrow account
- audited accounts of the main developer and any sub-developer
- a feasibility study of the project setting out its successive phases
- evidence that the developer has at least three years experience in property development;
- copies of the architectural drawings submitted to the relevant municipality
- any other documents requested by the Ministry.

Applications are determined within 60 working days, although the Minister has the discretion to extend that period by a further 30 days. Successful applicants are awarded licences with a maximum term of three years. Licensed developments must be carried out in accordance with the documents submitted with the application, which can only be deviated from with the consent of the Ministry.

Payment Milestones

The Regulation provides for the following payment milestones, although the developer and buyer are free to agree their own payment plan should the circumstances of any given development require it:

Project Account Manager

The Regulation also introduces the requirement for every development to have a project account manager appointed in writing by its developer. The written agreement between the developer and the project account manager must be submitted to the Ministry together with a completed application form. The project account manager's name will then be entered on a register of the project account managers of all current developments.

The project account manager's main role is to open and maintain a project escrow account into which a sum equivalent to 20% of the estimated value of the project (including the land acquisition cost) must be deposited. The project account manager is obliged to maintain (and to provide to the Ministry on its request) a record of payments into and out of the project account.

In conjunction with the Regulation, the Central Bank of Bahrain has issued a resolution (No. 28 of 2015) regulating the role of the project account manager (the "Resolution"). The Resolution specifies that the project account manager must be a retail bank licensed by the Central Bank of Bahrain and the project escrow account must be managed by bank employees who have at least three years' banking experience. The Resolution also provides that the project account manager must:

- not provide any other financial services to the development
- not grant security over the project escrow account
- ensure that only depositors have access to account records
- provide regular statements of receipts and disbursements to the Municipality One Stop Shop (Bahrain's new, centralised location for regulating and monitoring development projects on behalf of all Bahrain's municipalities)

- provide a final statement of account to the developer if the agreement between the developer and the project account manager is terminated for any reason or the project escrow account is closed for any reason before the completion of the project.

The Resolution also requires the project account manager to hold in the project account all money relating to the project including any third party financing money and only to disburse that money with the prior approval of the development's consultant engineer.

Finally or Temporarily Stalled Projects

In addition to setting out procedures to be followed by the developer and the buyer on the handing over of a unit at the successful completion of a development, the Regulation provides mechanisms for dealing with "finally" and "temporarily" stalled projects. Stalled projects, and the consequences to would-be purchasers of units in them, have been of particular concern in Bahrain. In the case of temporarily stalled projects (i.e. projects on which no work has taken place for less than a year), the ministerial committee for reconstruction and infrastructure (the "Committee") is empowered to take all necessary measures to protect would-be purchasers and/or ensure the completion of the project and/or return deposits. In the case of finally stalled projects (i.e. project on which work has stopped for more than a year), the Committee is empowered to request that the Real Estate Disputes Committee requires the developer in question to complete the development using its own resources or that the development is sold and the proceeds of sale distributed to the depositors/would-be purchasers.

Conclusion

Only time will tell whether Bahrain's new regulated regime for property development will prove effective. Indeed, painful as it is to contemplate such a prospect, it will take another downturn in the property market for it to be truly tested. Nevertheless, the new regime, of which the Regulation and the Resolution are important elements, is a clear demonstration of the Bahraini government's commitment to making Bahrain an attractive destination for both developers and purchasers.