

A New Era in Real Estate in Bahrain

by Unkar Chanian - u.chanian@tamimi.com - Manama

February 2018

Law 27 of 2017.

Law No. 27 of 2017 concerning the Promulgation of the Real Estate Sector Regulation Law (**New Law**) was issued in the Official Gazette on 03 August 2017, with Chapter One coming into effect on 01 September 2017, and the remaining sections of the New Law coming into effect on 01 March 2018. The New Law contains 109 Articles and is a comprehensive piece of legislation which covers a wide range of issues relating to the Real Estate sector. The main areas are as follows:

Establishment of a Real Estate Regulatory Authority

Chapter One of the New Law deals with the establishment of a Real Estate Regulatory Agency (RERA) which will regulate the Real Estate sector in Bahrain. The board of directors of RERA (Board) has recently been announced, and the CEO of RERA, Sheikh Mohammed bin Khalifa bin Abdulla Al Khalifa, has been duly appointed.

The Board has a number of tasks ahead of it, including the implementation of a national plan concerning the regulation of the Real Estate sector and issuing regulations for the operation of the New Law.

Off-Plan Development in Bahrain

One of the most eagerly awaited aspects of the New Law was the regulation of off-plan developments. The New Law has replaced Law No. 28 of 2014 concerning Property Development which previously governed all off-plan developments, albeit the New Law contains a number of similar requirements.

Developers who sell off-plan properties will need to obtain a “Developer’s Licence” prior to carrying out any development activities – a resolution from the Cabinet of Ministers will determine what is a “property development” and the Board will issue a resolution determining the requirements for obtaining, renewing and amending a “Developer’s Licence”.

Once a developer has obtained a “Developer’s Licence” its details shall be recorded in a “Developer’s Register” which shall be kept by RERA.

As well as obtaining a “Developer’s Licence”, the New Law requires each development or project to obtain a “Development Licence”. RERA will keep a “Development Register” which shall include the following information for each registered development:

- Plans and specifications, designs and drawings of the development;
- Details of the Escrow Account and any financial guarantees; and
- Any other data deemed appropriate by the Board.

When obtaining a “Development Licence”, a developer must submit to RERA, amongst other items,

the following:

- The title deeds or its substitute;
- Approved architectural and structural engineering plans;
- Method statement detailing the completion and implementation of any phases of the development;
- The building permit;
- A valuation of the development from a COEPP licenced engineer; and
- Any other information required by RERA as determined by a resolution from the Board.

The New Law places an obligation on developers to proceed with the development and RERA has the power to withdraw a “*Development Licence*” should the development not proceed as required. The exact criteria will be determined by a resolution of the Board.

Similar to previous legislation and other GCC markets, a Developer will be required to create an Escrow Account with a registered Escrow Agent. An Escrow Account will be used to deposit the sums obtained from the sale of units in a development and will include any finance obtained for the development. Further details of the amount of the initial deposit and the rules relating to the Escrow Account will be issued by way of a resolution by the Board in coordination with the Central Bank of Bahrain.

The Escrow Account shall be exclusively designated for the development, and any sums deposited within the Escrow Account shall be “ring fenced” and will not be able to be seized or utilised by any creditor of the developer. A certain percentage of the structural value of the development shall be required to be kept in the Escrow Account for 12 months following the sale of the last unit within the development. Such sum shall be utilised to remedy any defects within the development.

An important requirement of the New Law prevents any marketing of the off-plan development, whether locally or internationally, without the development being registered.

Various other regulations are awaited from the Board, some of which will deal with the following:

- The terms and conditions of sale contracts used in an off-plan development;
- The on-sale of a unit by a buyer to another party prior to completion; and
- The cancellation of the development.

Brokerage, Valuers and Property Management

Sections 3, 4 and 5 of the New Law cover brokers, valuers and property management respectively, with each profession being required to obtain a licence from RERA to practice. Resolutions setting out further requirements will be issued by the Board, however one important restriction of the New Law is that Valuation and Brokerage activities cannot be undertaken by the same business.

Joint Ownership and Home Owners Associations

The main changes from the previous law is that a Home Owners Association (**HOA**) is required to be established on the sale of one unit (rather than 4) and shall be an incorporated entity. Also, a HOA will now be capable of being registered at the Survey and Land Registration Bureau and will form part of the title deed of any common property which is jointly owned.

Registration of Rights

The New Law requires all property “real” rights to be registered and these will include long-term leases, rights of Musataha and mortgages.

Penalties

Non-compliance with the New Law carries severe penalties which range from up to 2 years imprisonment and a fine of up to BHD50, 000.

Conclusion

The New Law with the ensuing resolutions will provide comprehensive legislation dealing with the Real Estate sector in Bahrain. The establishment of RERA as the regulator creates the necessary government authority to implement the New Law and regulations with such regulation having the potential to provide a level playing field for stakeholders and give greater confidence in the market to investors.