

Laying the Foundations for a Bright Future in Bahrain Real Estate

Unkar Chanian - Senior Associate - Real Estate
- Manama



New resolutions have been introduced to boost investor confidence and fulfil an efficient and sustainable real estate market in the Kingdom of Bahrain. Decision No. 1 of 2018 Concerning Licenses of Developers, Brokers and Sales Agents ('Decision No. 1') and Decision No. 2 of 2018 Concerning Licenses for Real Estate Developments Projects ("Decision No. 2") were issued in the Official Gazette and came into force on 2 March 2018.

After the successful launch and operation of the Real Estate Regulatory Authority ('RERA'), a regulatory

body now oversees the real estate sector in the Kingdom of Bahrain. Decision No. 1 and Decision No. 2 are the first of a number of regulations, to be issued by RERA over the coming months in line with Law 27 of 2017 Concerning the Promulgation of the Real Estate Sector Regulation Law ('Real Estate Law').

Decision No. 1

Pursuant to Decision No. 1, the activities of developers, brokers and sales agents ('Applicant') cannot be undertaken within the Kingdom of Bahrain without obtaining an authorization issued by RERA ('License'), which can be obtained online at <http://www.rera.gov.bh/en>. Decision No. 1, also prohibits an Applicant who has been convicted of a crime or declared bankrupt (or if a corporate entity, where its directors have been declared bankrupt) without rehabilitation from obtaining a License.

Decision No. 1, lists the information required from an Applicant. Notable requirements include 3 years audited accounts and the previous history of a developer (excluding new developers). In relation to a broker, evidence of 3 years' experience together with the successful completion of examinations and training courses set by RERA are required.

RERA will reject or approve an application to obtain a License within 5 days of receipt and if a decision has not been reached by RERA with the 5-day time limit, the application will be deemed to have been unsuccessful. A License shall be valid for 1 year and is required to be displayed in a visible place at an Applicant's place of work and any application to renew the License must be made not less than 60 days of its expiry.

RERA have the authority to revoke a License if:

- an Applicant has provided false information;
- a condition of the License has been breached;
- the License has been passed onto a third party;
- an Applicant's Company Registration is revoked; or
- the legal personality of an Applicant has changed without RERA's consent.

RERA has provided some leeway for existing developers, brokers and sales agents in that they have until 1 September 2018 to rectify their status and obtain a License.

Decision No. 2

Development License

Decision No. 2 applies to projects where a developer intends to sell units off plan and any other project as determined by the Cabinet ('Project'). Decision No. 2 requires a developer to obtain a licence for each individual Project ('Development License').

When applying for a Development License, a developer must supply RERA with a number of documents including:

- the title deed or anything equivalent in lieu of the deed;
- the approved structural and architectural drawings;
- a copy of the main plan, the building permit;
- a specimen sales contract;
- evidence of annotation of the Project in the Land Journal at the Survey & Land Registration Bureau ("SLRB"); and
- an estimate of the value of the Project, which has been signed by an engineer licensed by the

Engineering Practical Organisation Council.

An application for a Development License is to be reviewed within 40 days and if a response is not received from RERA within that time period the application should be deemed rejected.

In view of providing greater transparency in the market, RERA shall create a publicly accessible register known as “Register of the Works of Real Estate Development Projects” which shall include details of all Projects.

Restrictions

The new measures in Decision No. 2 include various restrictions placed on developers, with a view to avoiding non-compliance. There is a restriction from mortgaging the Project except from a financial institution licenced by the Central Bank of Bahrain and depositing the entire financing amount in the escrow account. Additionally, developers cannot sell the entire development as a whole to another developer without the written approval of the Chief Executive of RERA.

Marketing License

Developers must obtain a marketing license (‘Marketing License’) prior to marketing a Project. A Marketing License can be obtained upon application to RERA and submitting amongst other documents;

- the details of Project;
- the advertising plan; and
- confirmation that an escrow account has been opened.

Moreover, RERA permits a developer to obtain a market research advertising license prior to obtaining a Development License. Such market research advertising license will be valid for 9 months which may be extended on application at least one month of its expiry, and can be obtained by making an application to RERA and providing;

- the approved plan; and
- the description of the Project and the media to be used.

Letter of Interest

With the interests of the stakeholders in mind, RERA has introduced the concept of a Letter of Interest (‘LoI’). The LoI allows a prospective buyer to reserve a unit where the developer does not have a Development License. Upon signing, a LoI a prospective buyer is required to pay a BHD 1,000 to the developer, which is fully refundable, should the prospective buyer withdraw from the transaction. The duration of the LoI will be left to the agreement of the parties; however, a sale contract will not be permitted to be concluded within the duration of the LoI.

Reservation Agreement

When reserving a unit, a prospective buyer is required to enter into a Reservation Agreement (‘RA’) and to pay a reservation fee of 1% of the purchase price to the developer upon signing a RA, which shall be non-binding. The duration of the RA is to be determined by the parties, however it cannot be less than 7 days

and if a buyer withdraws from the RA, the developer will be entitled to withhold up to BHD 200 from the reservation fee to cover its administrative expenses.

Sale and Purchase Agreement

RERA has provided measures within Decision 2 for the minimum requirements of Sale and Purchase Agreements ('SPA'). For example, a prospective buyer is required to pay a deposit of 10% (less any sums paid pursuant to the Lol and RA) on the signing of the SPA. SPAs will be required to be registered at the SLRB by the developer subject to the payment of a fee, which can be passed down to the buyer.

Decision No. 2 places further requirements on the contents of a SPA, which must include details of the:

- parties (including the license number of the developer);
- project including the Development License number;
- completion and handover;
- unit including its dimensions; and
- common areas.

Any SPA not including the above information will be null and will not be capable of registration at the SLRB.

A developer is also required to issue a Disclosure Statement, which shall form part of the SPA. The Disclosure Statement shall include details of the:

- the buyer's percentage of the common property;
- articles of association of the Owners Association;
- indicative budget for maintenance for 2 years following handover;
- details of restrictions on the use of the unit; and
- any other data required by RERA or any other Government Authority.

In addition, restrictions have been placed on the payment plan within the SPA, where the amounts cannot exceed the payment certain construction thresholds.

Various other restrictions have been placed on the developer in relation to payments, which include an obligation of providing a buyer and RERA with progress reports and obtaining RERA's approval prior to requesting an interim payment pursuant to the SPA.

If a buyer breaches its obligations within a SPA the developer is required to notify the buyer of such breach and permit the buyer 90 days to rectify such breach prior to terminating the SPA. On termination of the SPA, a developer can retain 10% of the amount paid. A buyer may terminate the SPA, if the unit has not been handed over within 6 months of the expected handover date after notifying the developer and the escrow agent and after the lapse of 90 days. Upon termination, a buyer can recover all sums paid to the developer without prejudice to any right for compensation.

A developer is entitled to 1% of the purchase price not exceeding BHD 500 to covers its administrative costs should a buyer sell its unit prior to handover.

Transitional Provisions

RERA has allocated a transitional time limit for developers who obtained a license pursuant to Law 28 of 2014, on the basis of encouraging investment and compliance. Such developers shall have 6 months to rectify its status and shall not be required to pay a fee for a Development License. Upon the application for a Development License, a developer will need to provide a certificate from an escrow agent stating the

opening of the account and level of financing together with a sales schedule listing the units and status of payments. The developer will also be required to register all SPA's of sold units at the SLRB.

Transitional License & Transitional Advertising License

In order to promote consistency, RERA has included provisions to regulate non-compliance of the previous laws. A developer who is undertaking an existing project and which does not have a license pursuant to Law 28 of 2014 has the option of obtaining a Transitional License from RERA for the Project and may also obtain a Transitional Advertising License. The documents to be supplied to RERA with an application for a Transitional License include similar documents required with an application for a Development License; however also include documentary evidence of the developer's experience & financial ability and a sales schedule. As the rectification period is 6 months all Transitional Advertising Licenses shall automatically expire on 1st September 2018.

Conclusion

Overall, we believe the Real Estate Law provide a clear framework for the real estate market in Bahrain. The requirements to undertake activities in relation to off plan developments are a positive step towards an internationally competitive real estate market. As a result of promoting investment and boosting stakeholders' confidence, RERA is building a stronger, more transparent and more efficient real estate ecosystem in the Kingdom of Bahrain.