

## HADEF & PARTNERS REAL ESTATE LEGAL UPDATE

# EXECUTIVE COUNCIL'S DECREE NO.(6) OF 2010 PROVIDES MUCH NEEDED CLARITY FOR THE REAL ESTATE MARKET

08 March 2010

Dear Ella Powell

Decree No. (6) of 2010 dealing with the Executive Regulations of Law No. (13) of 2008 (Regulations) has now been signed and is awaiting formal publication in the Official Gazette.

[Hadeef & Partners](#) has reviewed a copy of the Regulations and is pleased to bring you the following brief update, with more analysis to follow once the Regulations are published in the Official Gazette.

- § The Regulations make it clear that a developer needs to only submit an application to register units under Article (3)(2) of Law 13 within the specified time in order to comply with the registration requirements. Applications made outside this time will still be registered but a fine of AED10,000 will be levied.
- § Developers cannot sell off-plan before taking possession (which includes actual control of the land) and only after obtaining the site location plan along with all necessary approvals from the competent authorities for the project.
- § Parking lots must be registered along with the purchasers' units.
- § The developer cannot refuse to transfer units if the purchaser has fulfilled his contractual obligations even if the purchaser owes other financial obligations not arising out of the particular sales contract.
- § Developers who wish to sell using real estate brokers must conclude a contract with a registered broker and have that contract registered with the DLD.
- § Sales of units in projects that have not been fully approved by the authorities are void.
- § Where brokers market all or part of the project the broker must place all sums received against the purchase price for the unit in the escrow account and cannot deduct monies for brokerage until after payment into the escrow account. Any contract that allows otherwise shall be void.
- § The DLD has the authority to act as a mediation service for disputes between developers and purchasers.
- § Further clarity is given on the procedures for terminating purchasers. Developers appear to now be able to send their own termination notices (i.e. not through the DLD) provided they copy the notice to the DLD. A developer does not need to sell at public auction if he completes more than 80% of the project and may elect to terminate the contract and retain up to 40% of the purchase price.
- § A developer can only rescind a contract with a purchaser where construction has not started provided the

developer proves he has fulfilled all his contractual obligations and proves the project was not initiated due to causes beyond his control and the failure was not due to his negligence.

- § Leveling and infrastructure works are evidence that a developer has started a project.
- § A developer may make use of or let a unit to a third party if the unit is not auctioned subject to the developer repaying any balance sums due to the defaulting purchaser in accordance with the timeframes set out in the Regulations.
- § A purchaser can request the courts to rescind a contract in the following cases:
  - (i) if the developer refuses to deliver the contract for the unit without any justifiable reason;
  - (ii) if the developer does not bind payments to construction based milestones as approved by the DLD;
  - (iii) if the developer significantly changes the specifications agreed in the contract;
  - (iv) if the unit is proved to be unusable due to major structural defects;
  - (v) in any other cases applicable under general legal rules.
- § For the purposes of the Regulations causes beyond the control of a developer include:
  - (i) the plot on which the project is to be built is re-possessed for public interest;
  - (ii) if a government authority stops the project for re-planning;
  - (iii) if excavations or service networks are found in the project's location;
  - (iv) if the master developer modifies the project's location in a way that prevents the sub-developer from executing its obligations;
  - (v) any other causes as deemed by the DLD.
- § Negligence by a developer includes:
  - (i) delay in taking handover of the plot and obtaining necessary approvals from the competent authorities without any reason;
  - (ii) sub-developer sells off plan without obtaining permission from the master developer;
  - (iii) delays in obtaining written approval for plans and designs;
  - (iv) delays in preparation of the project for actual construction works;
  - (v) not providing the DLD with necessary information required to approve the project;
  - (vi) non registration of project with DLD;
  - (vii) non disclosure of the project's financial data to the DLD;
  - (viii) any other causes as deemed by the DLD.
- § The DLD can cancel a project on the basis of a technical report in the following cases:
  - (i) the developer does not initiate construction without justifiable cause after obtaining the required approvals;
  - (ii) the developer breaches Dubai Law 8 of 2007 (the [Escrow Law](#));
  - (iii) the DLD finds the developer not serious about constructing the project;
  - (iv) the land on which the project is to be built is re-possessed due to breach by the sub-developer of its contractual obligations towards the master developer;
  - (v) the land on which the project is to be built is affected by planning and re-planning projects by Dubai authorities;
  - (vi) the developer fails to commence the project due to gross negligence;
  - (vii) the developer declares its intention not to commence the project for reasons acceptable by the DLD;
  - (viii) the developer declares bankruptcy;
  - (ix) any other causes as deemed by the DLD.
- § A developer can appeal the DLD's decision to cancel a project within seven days of being notified by the DLD.

- § If the balance in the trust account is insufficient to satisfy the purchasers' rights, the developer shall repay the outstanding sums to the purchaser within 60 days of cancellation unless an extension is granted by the DLD.
- § If a developer fails to repay the sums to purchasers in cases of project cancellation, then the DLD has the authority to take necessary steps to protect purchasers' rights including referring the matter to competent judicial authorities.

The Regulations whilst providing some much needed clarity over many issues also throws up some interesting characteristics such as reinforcing the wide degree of power and discretion the DLD holds in respect of projects.

It is also still not clear how the DLD will approach situations where a purported termination of a purchaser is met with resistance and/or whether the DLD will remove an interest in the interim register without a court order where a legitimate dispute has arisen. Further clarity may also be needed where a bankruptcy event occurs as to how exactly the interim registered interests will be treated as far as priority is concerned in the bankruptcy situation.

If you have any questions on the above, please contact the HadeF & Partners Real Estate team.



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