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### Realty market upbeat over new law on cancellations

Decree attempts to address balance of power in sector

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Dubai: The new real estate Decree No 6 has been hailed as a positive move in the real estate market and details how projects will be cancelled.

"The decree provides many strategic legal planning, negotiation and dispute resolution opportunities for clients, although clarity is required for certain provisions," Shahram Safai, partner and head of the real estate department of the law firm Afridi and Angell, told Gulf News.

As the number of buyers defaulting on payment plans and the number of developers delivering their projects increases, disputes between the two entities will remain a dominant theme in the UAE real estate market this year.

The introduction of the new law aims to dispel these disputes by litigation giving power to both the purchaser and the developers.

"Under Law No 9 of 2009, power was given to the Real Estate Regulatory Agency (Rera) to cancel projects. After a period of no cancellations whatsoever, this new decree gives direction as to how to go about cancelling," Safai said.

According to the law, a buyer can cancel the contract if the developer is in breach of the Escrow Law or delays construction without a justifiable cause after obtaining the required approvals.

Other reasons include the developer failing to commence the project due to gross negligence or in the event of the developer declaring bankruptcy.

The Land Department can also cancel the project if it establishes that the developer is not serious about executing the project, or any other causes deemed fit by the department.

The developer is able to appeal against the cancellation. If the decision is not overturned, the developer has to repay the purchasers within 60 days of cancellation unless an extension is granted.

A problem lawyers have foreseen is the repayment of money when a contract is terminated. When there is a cancellation, the bank that holds the escrow account is required to pay back all the money to the purchaser within 60 days of cancellation. This presents a problem if funds are missing.

"If a developer doesn't have the money, they can be pushed into bankruptcy. According to bankruptcy statistics in the UAE, if a company goes into bankruptcy you'll recover around 10-15 per cent," Safai said.

Rera usually institutes an investigation when money is missing. However, according to Sydene Helwick, a partner at Al Tamimi and Company, the trustee bank is also liable for the money leaving the escrow account.

An increasing number of purchasers, who had found themselves at a dead end in their attempts to resolve disputes with developers, can now look forward to the new decree which allows end users to take their complaints to the court within the guidelines set out by the decree.

"Before the decree, one could not terminate the contract unless one got approval from the Land Department resulting in a stalemate and a very low number of terminations. Decree No 6 opens the door to a lot more immediate action," Safai said.

#### **Termination notice**

The decree will also allow the developer to terminate a purchase agreement by directly sending a termination notice to the purchaser who is in breach, completely removing the need for the Dubai Land Department's approval or involvement.

On the flipside, the decree also outlines that a purchaser can terminate a contract for a number of reasons including a situation where a developer fails to deliver the unit to the purchaser without a justifiable reason or when the payment schedule does not conform to the Rera-approved payment schedule.

"The decree attempts to readdress the balance of power, which has previously been too much in the favour of developers," said Craig Plumb head of research at Jones Lang Lasalle.

However, according to Safai, this could also create the groundwork for a lot of litigations.

"An increase in the number of registered court cases is bad news all round. The courts are ill equipped and under resourced — they are struggling to cope with their current case load in a timely manner," Plumb said.

"The preference would be to set up an arbitration system outside of the courts. The decree makes some moves to establish the DLD (the Dubai Land Department) in this role," he said.

"As with other areas the devil will be in the detail, it remains to be seen how the DLD will cope with these additional responsibilities."

In order to ease the reliance of purchasers on a developer, the decree also states that purchasers may register their units at the DLD without the approval of the developer, so long as the purchaser is in compliance with his contractual obligations.

"This is a positive move where purchasers have gained strength [with] which they can terminate their contracts," Safai.

Expectations are that Rera will cancel certain projects that are deemed unfit to continue.