

LAW ALERT - New Dubai Decree 6 of 2010: Termination of Property Purchase Agreements

Details of the Dubai Executive Council's Decree Number 6 of 2010 (Regulations for Law 13 of 2008 on Regulating the Interim Real Estate Register) have been revealed earlier this week, although the final version of the Decree is yet to be published in the Gazette.

We provide below a brief summary of the details of the Decree.

One of the primary provisions of this Decree is the ability of the developer to terminate a purchase agreement by directly sending a termination notice to the purchaser who is in breach, with termination being effective after a 30 day cure period if the breach is not remedied. The Dubai Land Department's approval or involvement does not appear to be necessary any longer. Only a copy of the notice need be sent to the Dubai Land Department.

Also, the Decree states that a developer has the option of renting a unit to recover its dues if such unit is not sold at auction in the termination process.

Furthermore, with respect to legal liability of the developer, the Decree confirms that the following shall constitute causes beyond the developer's control: if the land has been retaken by the government for public interest; if a government authority halts work relating to the project due to replanning reasons; if artefacts or pre-existing utilities are located on the plot; if the master developer makes modifications to the project's boundaries and area in such a way that affects the performance of the developer's obligations. The Decree also states that commencement of construction for a project is deemed to have occurred if leveling of a plot has occurred and the project's infrastructure has been installed.

On the other hand, the Decree states that a developer will be deemed to be negligent in performing its obligations if it: delays without reason the taking over of the land and necessary approvals; sells off-plan without due permission; delays having plans and designs approved in writing; delays preparing the project for structural activities; does not provide the Land Department with information and data necessary for approving the project; does not register the project at the Land Department; does not disclose the project's financial data to the Land Department; and any other reasons deemed acceptable to the Land Department.

The Decree confirms that a developer shall not sell units off-plan or commence a project until it has taken possession of the plot; takes actual control of the plot; and obtains all necessary approvals.

A purchaser is permitted by the Decree to request a competent court of law to terminate a contract if: a developer fails to deliver the unit to the purchaser without justifiable reason; the payment schedule is not pursuant to the RERA approved payment schedule; a

developer significantly changes the specifications of the agreement; the unit is proven to be unusable due to major structural defects; and any other causes acceptable under law.

The Decree also states that purchasers may register their units at the Dubai Land Department without the approval of the developer so long as the purchaser is in compliance with his contractual obligations. Also, a developer may not refuse to so register if the purchaser is in compliance.

Importantly, several Articles in the Decree are dedicated to unilateral cancellation of an entire project by the Land Department (as opposed to termination of a purchase agreement by a developer or a purchaser). Under the Decree it is further confirmed that the Land Department may, based upon a technical report, unilaterally cancel a project if: the developer does not commence construction without acceptable reasons; if the developer has committed offences under Article 16 of the Escrow Law (i.e. embezzlement or fraud related actions); the developer is not committed to proceeding with the project; the master developer terminates the plot purchase agreement for breach by the developer; the plot is affected by government projects; the developer is grossly negligent in implementing the project; the developer states that it shall not proceed with the project; the developer declares bankruptcy; and any other reasons deemed acceptable to the Land Department.

A developer may appeal the Land Department's decision to cancel a project within 7 business days of notification by providing written reasons. The Land Department shall revert with its final decision in this regard within 7 further business days.

Upon a project cancellation by the Land Department: an auditor will be appointed by the Land Department to audit and prepare financial statements; the bank shall repay all sums in the escrow account to the purchasers within 14 days of cancellation; the developer shall repay any balance sums (that have been withdrawn from the escrow account) to the purchasers within 60 days of cancellation.

The Decree provides many strategic legal planning, negotiating and dispute resolution opportunities for clients, although clarity is required as to certain provisions. The above is for informational purposes only and does not constitute legal advice. Please feel free to contact us to discuss further.

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