

Off Plan Pitfalls

There are many investors who have off plan properties, where either construction has stopped, or has not even started. In some cases the developer has closed their business and in others they are demanding more money, even when the progress on the ground does not seem to justify this.

There are also many developers who have sold units to purchasers, who are now seeking to cancel their commitment, either due to funding issues or the fact that values have fallen. The failure of purchasers to adhere to the payment plan can jeopardise the whole project.

This article seeks to provide advice mainly from the investor's viewpoint. When faced with a project which either has not started or is not progressing to timetable, what does one do?

There are a number of specific property laws relating to off plan purchases in Dubai and whilst some seem to be of more assistance to the developer, the new Decree 6 of 2010 does go some way to redress the balance, although it does give the developer more power to cancel contracts.



Where a development is not progressing in accordance with the legal agreement, the first step is to read carefully the agreement. Often the developer reserves the right to delay the project by a specific period and there is usually a 'Force Majeure' clause by which they can delay it almost indefinitely. Force Majeure defences may be used by sub-developers, where infrastructure has not been provided or delayed by the master developer, or where the design of the master development has been changed.

Some agreements provide for resolution of any dispute by arbitration, which is often a cheaper and quicker alternative to court action. There are also various mediation forums, but these attempt a resolution by agreement and have no power to enforce a settlement on either party.

The purchaser needs proof of the payments they have made and needs to show that these have been received by the developer. Sometimes payments have been made to a broker on a reservation contract and the payment has not been passed on to the developer, this can cause complications.



There are a number of facts that need to be checked relating to the registration of the developer, the project and the escrow account because if these have not been adhered to, this may ease any action for the return of the deposit.

It is also necessary to check if the unit has been registered with the Dubai Land Department (DLD) in the purchaser's name. If the purchase contract has not been submitted for registration in a specific timescale, it may be possible to cancel the contract, although recently the courts appear to be less inclined to take such action for late registration.

Next it is advisable to check the official status of the project on the RERA web site, this advises if the developer and the project are registered and will provide escrow account details. The purchaser is entitled to check with the bank whether there is money in the project's escrow account in the purchaser's name.

If the purchaser is in default of the agreed payment schedule the developer may issue default notices and ultimately cancel the contract. There are legal provisions about how much of the purchase price can be retained by the developer and what they can do with the unit after cancellation.

If the project has not commenced, the developer is not entitled to retain any money, but the commencement of construction may include minor works such as levelling or excavation.

Decree No 6 of 2010 provides specific circumstances where a purchaser can request the court to cancel the contract in the following cases:

The contract for the unit has not been provided without a valid reason;

- ❖ The developer does not bind payments to DLD approved construction based milestones;
- ❖ If the contractual specifications are changed significantly;
- ❖ Where the unit is unusable due to major structural defects;
- ❖ Under other general legal principles.

The most significant of these is that of binding payments to construction based milestones agreed with the DLD. This would appear to override the contractual payment provisions and may be used to resist requests for additional payment from the developer, in the absence of physical progress with the development.

The main problem for small investors is the cost of pursuing a court case, which includes lawyer's fees, court fees and translation costs. As the UAE legal system is not precedent based (is is not bound to have regard to previous decisions on similar cases) the outcome of similar cases is not guaranteed and it is often difficult to obtain any assessment of the likelihood of a successful outcome of the case.

There is a new solution for off plan investors who meet specific criteria. The Fine & Country Recovery Service has negotiated special terms with selected developers of completed high quality units.

For off plan contracts matching certain specific criteria, they will honour off plan payments to other developers and will deduct the payments already made from the purchase of a completed new unit. Finance is available and the purchaser will be handed the keys immediately on completion of formalities.

If you would like to see if your properties are eligible, please download the enquiry form from our web site <http://charteredsurveyor.fineandcountry.ae> or email recovery@fineandcountry.ae



Adrian Camps, FRICS, ACI Arb, MEWI, MEI Chartered Surveyor
Managing Director & CEO – *Fine & Country Professional Services*