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EVALUATING MAXIMUM COMPENSATION CRITERIA FOR PROPERTY DEVELOPERS ACCORDING TO THE INTERIM REAL PROPERTY REGISTER IN DUBAI

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ABSTRACT

This paper presents an assessment of the criteria for setting the maximum amount of compensation given to a property developer when a buyer breaches their contractual obligations according to the law of the Interim Real Property Register in the Emirate of Dubai. The register gives the developer the power to deduct a certain percentage of the amount paid to them by the buyer, without the need to resort to justice or arbitration. Such a power is one of certain exceptional powers granted to the developer under this law to encourage property investment in Dubai. This research aims to define the type of compensation that the property developer deserves, as well as present the criteria for the maximum amount of compensation and an evaluation of them. This was achieved by analyzing Article 11

of the mentioned law for accuracy and fairness on this issue, and its success in balancing the conflicting interests of both parties. One key result found was that the legislator had not succeeded in balancing the two parties of the off-plan sale. It is strongly recommended that the legislator abolish the three criteria on the maximum amount of compensation and adopt alternative criteria.

Keywords: Compensation, property developer, off-plan sale, Dubai.

INTRODUCTION

The real estate sector in the Emirate of Dubai is a prime factor in attracting investors, given the excellent investment opportunities and large financial returns it provides, and has thus become one of the most developed in the world. A key reason for the rapid growth of the sector is the flexible and responsive legislation governing changes to Dubai's real estate market. In this emirate, there is an integrated system of legislation that deals with all regulatory aspects of the property sector, including, but not limited to, the Land Department Law No. 30 of 2013, the Dubai Real Estate Institute Law No. 13 of 2012, the Dubai Real Estate Corporation Law Nos. 13–14 for 2007, the Law of the Special Judicial Committee for Settling Real Estate Disputes in the Emirate of Dubai No. 30 for 2007, and the Law on Accounts for Guarantee of Real Estate Development in the Emirate of Dubai No. 8 for 2007. Among the most prominent of these legislations is the Initial Real Estate Registry Regulation Law No. 13 of 2008 (Dubai Judicial Institute, 2016). The Interim Real Property Register is a set of documents maintained by the Dubai Land Department (DLD) in paper or electronic format, in which the details of off-plan sales contracts and other off-plan legal dispositions, are recorded prior to transferring them to the Real Property Register (Al-Saeedi, 2018). Off-plan property sales is a contract of sale for off-plan detached real property units, or under-construction units, or those whose construction is incomplete (Article 2 of Law No. 13 of 2008) (Al-Lassimah, 2017; Al-Saeedi, 2018; Rbhy & Rizki, 2017; Shaaban, 2017; Yunus & Saleh, 2016). The Interim Real Property Register (IRPR) has gained the attention of legislators in Dubai, and is organized under Law No. 13 of 2008, which covers off-plan sales. The explanatory note accompanying Law No. 19 of 2017 (as

an amendment of Law No. 13 of 2008) states that, the main goal of issuing Law No. 13 of 2008 and its Implementing Bylaw is to set the rules regulating off-plan sale agreements in a way that ensures that the rights of developers and purchasers are protected, and creates a safe and transparent environment where real property projects are implemented on time without any further delay, Therefore, the aforementioned Law and its Implementing Bylaw include provisions thus guaranteeing the completion of the objective of off-plan sale agreements, namely completing the construction of the subject real property units and transferring their ownership to purchasers, and determine the obligations of developers and purchasers, as well as the consequences of breaching such obligations (Al-Saeedi, 2018; Ibrahim, 2014).

The law grants a property developer exceptional powers when a buyer breaches the contractual obligations, and from these powers, the developer has the right to terminate the contract and deduct a certain percentage of the sums paid to them by the buyer as compensation, without the need to resort to court or arbitration (Article 11 of Law No. 13 of 2008) (Ibrahim, 2014). This research aims to evaluate the criteria for the maximum discount percentage legally granted to the property developer as compensation for a buyer's breach of contractual obligations. To do so, it assesses Article 11 of the law of the Interim Real Property Register in the Emirate of Dubai in terms of its accuracy and fairness in addressing the developer's right to compensation, and successfully balancing the conflicting interests of both contracted parties. Furthermore, the analysis covers whether the exceptional powers given to the developer, including the compensation ratio, contribute toward economic development in the real estate area or impede such development. There is a particular focus on when such powers have been over-granted and misused by the developer, causing financial and legal problems to arise. Therefore, the purpose of this research is not only to address this problem, but to decide whether the nature of the justice between the parties of the contract and the economic interests of the Emirate of Dubai need to be maintained, canceled or adjusted regarding the maximum compensation criteria. The importance of this research lies in a statement in the Explanatory Note of the Principal Real Estate Registry law, which stated that an amendment has been made to Article 11 due to the many instances of jurisprudence owing to the contrast between the courts' jurisprudence

in applying its provisions. In particular, with regard to the right of the developer to avoid a contract by their own will when the buyer breaches their contractual obligations, the Article was amended more than once to ensure both a strict understanding of its provisions and prevent divergent views in the determination of its meaning, which might negatively affect the real estate sector in the Emirate of Dubai (Dubai Court of Cassation Appeal No. 153, 2020). Finally, this research points out that public references are used to address this issue because the law library is devoid of specialized references.

TYPE OF COMPENSATION FOR PROPERTY DEVELOPERS

Determining the amount of compensation to which the property developer is entitled when the buyer breaches contractual obligations first requires a determination of the type of compensation to be given. This is based on the authority that determines the amount, i.e., whether it is legal, consensual, or judicial compensation. Article 389 of the UAE Civil Transactions Act stipulates that if the compensation is not estimated by law or contract, then it must be estimated by the judge. For legal compensation, it is the legislator who determines the amount in a legal text and before a case of civil liability (Sarhan, 2010). For consensual compensation, also called the Penalty Clause, this is estimated by both civil liability parties before a case of liability. For judicial compensation, the judge estimates the amount in the case of civil liability and when a dispute is litigated. Judicial compensation is preferred as a means of achieving justice between the civil liability parties, as it is also considered the original law, while the other types are exceptions (Al-Arabi, 2019; Al-Mahdawi, 2009; al-Jubouri, 2003; Ibrahim, 2006).

To identify the type of compensation to which the property developer is entitled under Article 11 of the Interim Real Property Register, paragraph A (4) of this Article stipulates:

The property developer may, after receiving the official document referred to in Clause (3) of paragraph (A) of this Article and according to the completion rate (it is implied by the Dubai Court of Cassation that the decision of the DLD on the developer's right of termination

and deduction of 40 percent of the payments made to him does not represent the official document that should be issued (Appeal No. 8 of 2018 Real Estate Session, Hearing on May 25, 2018 (Unpublished), take the following actions against the buyer without resorting to the judiciary or arbitration:

a) If the developer completes more than 80 percent of the property unit, he might do any of the following: 1. Maintaining the contract with the buyer and retaining all the money that the buyer paid him previously in addition to the ability to ask the buyer to pay the remainder of the contract value. 2. Asking the DLD to sell the subject of the contract (the property unit) at a public auction to collect the remaining amount due, with the buyer's obligation to handle all the costs incurred on this sale. 3. Unilateral termination of the contract, and deducting no more than 40 percent of the value of the property unit stipulated in the off-plan sale. He should also refund any amount in excess of this to the purchaser within one year from the date of contract termination, or within 60 days from the date of the resale of the property unit to another buyer, whichever is earlier;
b) If the developer completes between 60 percent and 80 percent of the property unit, he may terminate the contract unilaterally, and deduct no more than 40 percent from the value of the property unit stipulated in the off-plan sale. He should also refund any amount in excess of this to the purchaser within one year from the date of contract termination, or within 60 days from the date of the resale of the property unit to another buyer, whichever is earlier;
c) If the property developer starts working on the property project, by receiving the construction site and starting construction work according to the designs approved by the specialized authorities, and the completion rate is less than 60 percent of the property unit, he may terminate the contract unilaterally and deduct no more than 25 percent of the value of the property unit stipulated in the off-plan sale. He should also refund any amount in excess of this to the purchaser within one year from the date of contract termination, or within 60 days from the date of resale of the property unit to another buyer, whichever is earlier;

d) If the developer does not start working on the property project for any reason beyond his control and without negligence or default, he may terminate the contract unilaterally and deduct no more than 30 percent of the amount paid to him by the buyer. He should also refund any amount in excess of this to the purchaser within 60 days from the date of contract termination (Dubai Court of Cassation Appeals No. 80, No.82, No.174, No.186, 2020).

This extract shows how the legislator has set the maximum amount of compensation to which the property developer is entitled, without specifying an amount, and therefore it can be said that such compensation is a legal compensation at its maximum amount. However, according to the entity that determines the amount, it is not a legal, consensual or judicial compensation, and may be considered voluntary compensation because it is determined unilaterally by the developer. In other words, this compensation is a special format not defined by the Civil Act. The question that arises here is whether this compensation can be considered a common form of legal and judicial compensation. To illustrate this form, this research indicates that the legislator has not specified the amount of compensation in any legal text, and has only set a higher limit. Therefore, the judge — in this case — would specify an amount of compensation according to the amount of damage, but not exceeding the maximum amount set by the legislator. In this case, compensation is thus a common form of legal and judicial compensation.

Nevertheless, there is a difference between the aforementioned form and the compensation to which the developer is entitled, according to the entity that specifies the amount of compensation. This difference occurs because, in the last format, it is up to the creditor (the developer) to determine the amount of compensation and not the judge. Despite this clear difference, the compensation is a common form of legal and judicial compensation. Since the specification of the amount of compensation by the developer is temporary and not permanent, there is a possibility that the buyer may resort to the Court to demand a reduction in the amount of compensation based on Article 11, paragraph F, which stipulates that, "The procedures and rules provided for in this Article do not prevent the buyer from resorting to the judiciary or arbitration if the developer is abusive in the use of the powers entitled by this Article, and the judge shall determine

the amount of such compensation once and for all". The benefits which accrue in the developer's authority to deduct compensation are twofold. First, the developer is relieved of the burdens of recourse to the judiciary and proving the damages suffered. Second, the developer has the ability to obtain compensation directly without incurring the burden of compulsory execution.

MAXIMUM COMPENSATION CRITERIA FOR THE PROPERTY DEVELOPER

Before explaining the maximum amount of compensation according to paragraph A (4) of Article 11, it must be noted that the powers granted to the developer when dealing with the buyer under this paragraph vary according to differences in completion rate. That is, if the property developer completes more than 80 percent of the property unit, they are free to choose between three options. One is to maintain the contract with the buyer and keep all the payments to the latter, while also asking the buyer to settle the balance. The second is to ask the DLD to sell the property unit at a public auction to collect the remaining amounts due, and the buyer bears all the costs of the sale. The third is a unilateral contract termination, and deduction of no more than 40 percent of the value of the property unit stipulated in the off-plan sale. The buyer is refunded with the extra above this percentage. However, if the completion percentage is 80 percent or less of the property unit, the property developer only possesses the third advantage of termination and deduction. Therefore, the developer should not be denied the first advantage (contract retention) when the completion rate is 80 percent or less, as such a denial is considered a negative step consisting of keeping the contract and waiting for the buyer to execute their role. It is unreasonable to deprive the developer of this right when the completion rate is 80 percent or less, as it is necessary to provide this right to the property developer in all cases, even if it is not mentioned in the text, because this right does not include any action against the buyer. From this, it can be seen that identifying the criteria by which to set the maximum amount of compensation for the developer first requires a review of this maximum amount in order to reach the adopted standard to set the cap. The maximum amounts of compensation stated in the text mentioned previously will now be presented (Al-Lassimah, 2017; Al-Saeedi, 2018).

Completion Rate of 60% or More

If the completion rate is 60 percent of the property unit or more, the developer is entitled to deduct no more than 40 percent of the price agreed in the contract, and should refund any amount in excess of this to the purchaser. This means that the maximum amount of compensation for the developer is 40 percent of the price. For example, if the agreed price was AED one million, the developer can deduct no more than AED 400,000 from the payments the buyer gave him. It is worth noting that the maximum amount of compensation does not vary if the completion rate exceeds 80 percent. However, in this case, the developer has two choices: to terminate the contract and deduct no more than 40 percent, or to sell the property to collect what is left of their right from the property price. The second option is considered a compulsory execution in addition to compensation, because the developer under this option will obtain the full property price without completing the work; hence, the extra here is considered compensation. Moreover, if the completion rate is 85 percent, this means that 15 percent of the price received is compensation; the higher the completion rate, the less compensation received. The first option is often the best for the developer because they will be refunded with the sold property and around 40 percent of the price. Therefore, they do not resort to the second option unless they think it is the best available, such as if the amount paid to the developer by the buyer is small and insufficient to cover what they want to deduct. It is worth highlighting here how some may consider that when the legislator granted the sell option)Put Option) to the developer, the legislator did not intend to determine how much compensation the developer could deduct from the amount collected from the sale. This research indicates that, whether or not the legislator intended to do so, the developer's access to an increase in their right can only be interpreted as compensation.

A Completion Rate of Under 60%

If the developer has not completed 60 percent of the property unit, the developer can deduct no more than 25 percent of the price in the contract, and refund any amount in excess of this to the purchaser. This means that the maximum amount of compensation the developer is entitled to is 25 percent of the price, and if the example in Section 3.1

is applied to this case, the developer may not deduct more than AED 250,000 from the amount paid to them by the buyer. One condition for applying this case is that the developer has begun work on the project after receiving the construction site and starting construction work according to the approved design, albeit with a very low completion rate.

If the developer has not started work for a reason beyond their control, then the developer can deduct no more than 30 percent of the payment paid by the buyer, and not of the price agreed in the contract, and refund any amount in excess of this to the purchaser within 60 days of unilateral contract termination. There are three observations concerning such cases. First, there is no way to give the developer the right to unilaterally terminate the contract, because if the developer has not begun work for a reason beyond their control, the implementation of their obligation has become impossible for a foreign reason. Therefore, the contract is automatically canceled by force of law. Article 273(1) of the UAE Civil Transactions Act stipulates that in contracts binding on both parties, if force majeure supervenes and causes the performance of the contract impossible, the corresponding obligation shall cease, and the contract shall be automatically canceled.

Second, the developer must return to the buyer the full amount that the buyer paid, because if the contract is terminated by force of law, then the corresponding obligation shall cease according to the previously mentioned text. That is, the buyer's obligation to pay the price is terminated and they have the right to recover what was paid to the developer. Based on this, what the developer deducts from the amount paid to them is considered compensation. Nevertheless, a question which then arises concerns on why the developer is entitled to this compensation. In fact, if the developer did not start work for reasons beyond their control, this is considered justification for not holding them contractually responsible. However, it is not a justification to place this liability on the buyer by allowing the developer to retain a percentage of the amount paid to them, considering that, if the developer is excused from not starting work, the buyer is also excused if they do not pay the amount owed to the developer.

Finally, the legislator should have equated the provision between the two states: first, when the developer fails to start work for a

reason beyond their control; and second, when the property project is canceled by the Property Regulatory Agency (this agency was established pursuant to Law No. 16 of 2007, and a new law was recently passed about this Agency, which is Law No. 4 of 2019). Article 11, paragraph B, states that, "[…] in the case of the property project cancellation according to a reasoned decision from the RERA, the property developer must refund the amounts received by him from the purchasers for them, in accordance with the procedures and provisions of Law No. 8 of 2007". Knowing that some of the reasons for the cancellation of the project are reasons beyond the developer's control, it is as if the land was entirely affected by planning or re-planning projects carried out by the competent authorities in Dubai (See Article 23(5) of the implementing regulation of Article 2 of Law No. 13 of 2008).

Criteria for the Maximum Amount of Compensation

Having discussed the maximum amount of compensation, it is clear that the legislator has adopted three criteria in how this may be determined. The first criterion can be described as general, while the others are exceptional criteria:

Criterion One —The first criterion is for cases when the developer has begun to operate and, whatever completion rate has been reached, the maximum amount of compensation is determined by a certain percentage of the price agreed in the contract. This percentage varies according to the completion rate, which is 40 percent when the completion rate is 60 percent or more, and 25 percent when the completion is less than 60 percent.

Criterion Two —The second criterion is for cases when the completion rate is more than 80 percent, under which the maximum compensation is determined by a certain percentage of the price agreed in the contract, which is inversely proportional to the completion rate. It is less than 20 percent when the completion rate is more than 80 percent, and this percentage decreases as the completion rate increases, on a sliding scale. It is worth noting that the property developer, under the previous text, has to choose between this criterion and the first when the completion rate is more than 80 percent.

Criterion Three —The third criterion is for cases where the developer has not started work for a reason beyond their control, and here the maximum compensation is determined by 30 percent of the amount paid to the developer by the buyer.

Before concluding this section on criteria for compensation, a point should be added about the nature of the provision for when the amount paid to the developer is insufficient to deduct the defined ratio. If the developer is entitled to substantial compensation in comparison to the amount paid to them, then they must resort to the Court or arbitration.

PROPOSAL ON THE CRITERIA FOR DETERMINING MAXIMUM COMPENSATION

The criteria presented in Section 3 will now be assessed in terms of their discipline in determining the maximum amount of compensation and the extent of their fairness.

The First Criterion

This criterion adopts only one basis for determining the maximum amount of compensation, and that is the completion rate reached by the developer in their work; there is no trace of the amount of damage to the developer or the number of payments paid by the buyer in determining the cap. Thus, it can be noted that the legislator's goal of relying on the completion rate to determine the maximum amount of compensation that a developer can deduct from the payments paid to them, without the need to resort to the Court or arbitration, is to reward the developer by facilitating compensation. As noted, the higher the completion rate, the larger the amount they are allowed to deduct as part of the amount paid to them. The completion rate criterion is not fair because if the completion rate is 60 percent, the developer has the right to deduct 40 percent from the agreed price; however, if the completion rate is less than that, even with a small difference they cannot deduct more than 25 percent. Moreover, if there are two developers, one who has finished 55 percent, and another who has finished 5 percent, neither can deduct more than 25 percent. The same is true for a developer who has finished 60 percent and one who has finished 80 percent, as neither can deduct more than

40 percent, and so on. To make this criterion fairer, the deduction rate should not rest on the total price, but on the price corresponding to the completion rate. This means that the deduction rate should be equal to what has not been achieved in the property unit, knowing that the suggested criterion is suitable for all cases, and with one deduction rate of 40 percent, for example, no matter what the completion rate is. Therefore, if the suggested criteria from the previous example under which the agreed price is one million dirham is applied, a developer who has completed 80 percent of the property unit has the right to deduct no more than 40 percent from the total price. However, when the price corresponds to the completion rate, i.e., AED 800,000, the developer does not have the right to deduct more than AED 320,000. In the case where the developer has completed 60 percent of the property unit, then they have the right to deduct no more than 40 percent from the price corresponding to the completion rate, or AED 600,000, and consequently, they do not have the right to deduct more than AED 240,000. At a completion rate of 50 percent, there would be the right to deduct no more than 50 percent of the price corresponding to the completion rate, which would be AED 500,000, and thus no right to deduct more than AED 200,000 and not AED 250,000. If the legislator wishes to raise the maximum deduction rate, according to the suggested criterion, the deduction rate could be raised, for example to 50 percent instead of 40 percent.

The Second Criterion

This criterion, like the previous one, has adopted only one basis for determining the maximum amount of compensation, and this is the rate of completion reached by the developer in their work. In this criterion, however, the completion rate adopted to set the maximum amount of compensation is in reverse, i.e., the maximum amount of compensation that the developer will receive under this criterion will decrease as the completion rate increases. No maximum amount of compensation has been set according to this criterion, but it is possible to say that the maximum amount is 19 percent when the completion rate is 81 percent, or more accurately, 20 percent and 80 percent, respectively. According to what has been noted above on the first criterion, it may be the legislator's goal to depend on the completion rate to set the maximum amount of compensation to reward the developer by facilitating their compensation. However, it is impossible to know the legislator's goal in relying on the completion rate in reverse, and so this criterion is unfair because the upper limit will

decrease as the completion rate increases. This scenario is contrary to the rules of justice, since increasing the completion rate means over-expenditure by the developer alongside scaling up efforts, requiring an increase in the amount of compensation, and not vice versa. This criterion is thus invalid, and the legislator should repeal it and adopt the same standard proposed in criterion one. It is worth noting that calling for the abolition of this criterion does not mean the abolition of the Put Option granted by the legislature to the developer, as this option may be useful for the developer in some cases, as stated earlier. To achieve this suggestion, this research proposes amending the text on the Put Option as follows: '2- Asking the Department (DLD) to sell the property unit, which is the subject of the contract at a public auction to meet the remaining payments for the developer, according to the completion rate, and deduct the compensation entitled to him based on the same criterion established in this Act, with the buyer incurring all the costs incurred on this sale'.

The Third Criterion

In cases where the developer has not started working for a reason beyond their control, they are presumed to be unworthy of compensation. However, if it can be assumed that the developer is worth the compensation in such cases, then the criterion adopted to determine the compensation amount is irregular, because the legislator has given the developer the right to deduct no more than 30 percent of the sum paid by the buyer, regardless of its amount. The amount of compensation the developer then receives will increase as the payment increases, especially since the IRPR Act does not include a rule requiring payments to be linked to completion rates. Therefore, if the legislator insists on compensation in this case, the current criterion should be replaced to become a certain percentage of the price agreed in the contract, and not of the paid sum, and then the assessed percentage, in this case, will certainly be much lower than 30 percent.

CONCLUSION

The main objective of the Act regulating the Interim Real Property Register in the Emirate of Dubai is to attract property investments to the Emirate. To achieve this goal, Article 11 of this law grants to a

property developer a set of exceptional powers, if the buyer breaches their contractual obligations. This includes the right to unilateral termination of the contract of off-plan sales, and to deduct a certain percentage from the sums paid to the developer by the buyer as compensation, without the need to resort to the Court or arbitration. The second conclusion from the compensation that a property developer is entitled to under Article 11 is that it is considered a common form of legal and judicial compensation. It is legal for its maximum amount and judicial for its extent, because the compensation amount is determined by the developer through a discount rate. This is, however, a preliminary rather than final determination, given the possibility that the buyer can resort to the Court to demand a reduction in the amount of compensation when the developer abuses the validity of the discount entitled to him under Article 11.

Furthermore, the developers' power to make a deduction provides two advantages: relief from the burden of resorting to the Court and proving the extent of the damage suffered; and the ability to obtain compensation directly without the burden of compulsory execution. Besides, Article 11 adopted three criteria to determine the maximum amount of compensation a property developer is entitled to when the buyer breaches contractual obligations. The first criterion is for cases where the developer has begun to operate and, whatever completion rate has been reached, the maximum amount of compensation is determined by a certain percentage of the price agreed in the contract. This varies according to the completion rate, which is 40 percent when the completion rate is 60 percent or more, and 25 percent when the completion rate is less than 60 percent. This research concludes that this criterion is unfair, because if the completion rate is 60 percent, the developer can deduct 40 percent from the agreed price; yet if the completion rate is even slightly lower, they cannot deduct more than 25 percent. The same is true for completion rates of 55 percent and 25 percent, as neither can deduct more than 25 percent; conversely, 60 percent and 80 percent completion rates obtain access to no more than 40 percent deduction, and so on.

The second criterion adopted by Article 11 is for cases where the completion rate exceeds 80 percent, with maximum compensation being determined by a certain percentage of the price agreed in the contract that is inversely proportional to the completion rate.

This criterion is also considered unfair because the upper limit will decrease as the completion rate increases, which is contrary to the rules of justice. An increased completion rate also means increased expenses and effort by the developer, which requires an increase in the amount of compensation rather than vice versa.

The third criterion adopted by Article 11 is for cases where the developer has not begun to operate for a reason beyond his control, with the maximum amount of compensation being 30 percent of the sum paid to the developer. This criterion is considered irregular, because the legislator has limited the deduction to no more than 30 percent, regardless of the amount, and so the amount of compensation the developer receives increases concomitant to the sums paid.

RECOMMENDATIONS

This research recommends the abolition of the validity given to the property developer, according to paragraph A(4) of Article 11, if the completion rate in the property unit is more than 80 percent. This validity is the retention of the contract between the developer and buyer, in order to retain all amounts paid to the former. In addition, the buyer should pay the remainder of the price, considering it is unfair to deprive the developer of this validity when the completion rate is 80 percent or less, because this denial is a negative step consisting of keeping the contract and waiting for the buyer to execute their role. It is also necessary to prove this right to the property developer in all cases, even if it is not mentioned in the text, and does not include any action against the buyer.

The abolition of Section D, paragraph A(4) of Article 11 is also recommended. This section states, "Where the Developer has not commenced work on the Real Property project for any reason beyond his control, without negligence or omission on his part, he may unilaterally terminate the contract, retain up to thirty percent (30%) of the amounts paid to him by the purchaser, and refund any amounts in excess of this to the purchaser within sixty (60) days from the termination of the contract". In this case, there is no way to give the developer the right to unilaterally terminate the contract and deduct a certain percentage, because if the developer has not begun to work for a reason beyond their control, it means that the implementation

of their obligation has become impossible for a foreign reason. The contract shall therefore be automatically canceled by force of law, and the purchaser's corresponding obligation to pay the price shall cease according to the general rules, and the developer is not entitled to any compensation.

A further recommended abolition concerns the three criteria that Article 11 has adopted to set the maximum amount of compensation for the property developer when the purchaser breaches contractual obligations. Instead of the deduction rate falling on the total price, the price should correspond to the completion rate, meaning that the deduction rate should be equal to what has not been achieved in the property unit. This suggested criterion is suitable for all cases, no matter how the completion rate varies, and with one deduction rate of 40 percent or less, or more according to what the legislator finds suitable. Eliminating these standards would contribute to economic development in the real estate field and prevent financial and legal problems, given the better balance that it will achieve between the two parties to the off-plan sale contract.

The fourth recommendation concerns an amendment to Section 2 of paragraph A(4) of Article 11, as related to the developer's ability to ask for the property unit to be sold, as follows: '2 - Asking the DLD to sell the subject of the contract (the property unit) at a public auction to collect the remaining amounts due to him according to the completion rate and to be able to deduct the compensation entitled to him based on the same criterion stipulated in this Act, with the buyer's obligation to handle all the costs incurred on this sale'.

Finally, the legislator has not succeeded in balancing the two parties of the off-plan sale, because the developer is exempted from resorting to the Court for compensation, and also relieved of the burden of proof of contractual liability. At the same time, the purchaser is obliged to resort to the Court to recover the excess amounts deducted, and burdened by proving the developer's arbitrariness. The buyer is also exposed to the possibility that the Court rejects the request because of its power to assess the achievement or failure of the arbitrariness. Therefore, balancing the relationship between the parties means that the developer should be obliged to deposit the amounts paid by the buyer to the DLD, in order to determine the amount of compensation

they are entitled to, and within the legally established regulations, or to leave the matter of compensation to the general rules in the civil law. It must also be determined whether the amount of compensation is what the real estate developer is entitled to when the buyer breaches their contractual obligations, or what the buyer deserves when the real estate developer breaches their contractual obligations. Article 17 of the Real Estate Sector Regulatory Law in the Emirate of Abu Dhabi No. 3 of 2015 specifies the above, as does the Law of Sale of Real Estate Units in the Emirate of Sharjah No. 34 of 2018. It is hoped that this research will lead the legislator in the Emirate of Dubai to reconsider the criteria for the upper limit of the amount of compensation to which a real estate developer is entitled. This is similar to the legislator's amendment of Article 11(f) of Act No. 19 of 2020, which was amended in line with recommendations made in previous research.

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