

# Know How

## 1 SALES CONTRACTS IN REAL ESTATE

### 1.1 Overview

- Real estate ownership in the UAE is categorised into three types: freehold, leasehold (usufruct) and Mustaha rights.
- Each emirate has its own specific regulations regarding foreign property ownership and the procedure for title transfer.
- In the Emirate of Dubai, property dispositions must be registered in the Real Property Register maintained by the Dubai Land Department in Dubai.
- The contract for sale of property is treated similarly to any transactional contract. However, as of 2014, the Dubai Land Department implemented a new standard form (Form F) for contracts to be used in real estate transactions.
- The general procedure for title transfer in the UAE consists of meetings between the buyer, seller and/or developer, the signing of Form F/MoU, depositing a securities cheque of around 10-15% of purchase price and transfer at DLD.
- VAT is applicable on the sale of commercial properties, however, it does not apply to residential properties in the UAE.
- There are certain non-statutory obligations on buyers and sellers and developers are statutorily mandated to provide specific disclosures relating to the property in question to the buyers.

### 1.2 Definitions

- **Civil Code:** Federal Law No. 5/1985 Promulgating the Civil Transactions Law of the United Arab Emirates State.
- **Dubai Land Department:** The governing department overseeing all matters of legalization for sale and purchase of land; and in charge of approving, organizing and documenting real estate trading operations in Dubai.
- **JAFZA:** Jebel Ali Freezone.
- **MoU:** Memorandum of Understanding.
- **Musataha:** The right to build on land for a specified duration not exceeding 50 years
- **NOC:** A No Objection Certificate is a formal letter notifying the recipient that there is no objection to the proposed activity in the letter being undertaken. The certificate is a pre-requisite in many of the legal procedures in the country.
- **RERA:** The Real Estate Regulatory Agency is the regulatory arm of the Land Department, which sets legislations to regulate the relationship between all contracting parties and organises the transfer process.
- **Resale:** Completed properties that can be transferred directly from seller to buyer.
- **Usufruct:** The right to use, enjoy and occupy land or property belonging to another person for a fixed term not exceeding 99 years. Usufruct is similar to the concept of leasehold under English law.

## 1.3 Practical Guidance

### 1.3.1 Land ownership

Real estate ownership in the UAE is categorized into three types as per Federal Law No. 5/1985 Promulgating the Civil Transactions Law of the United Arab Emirate State and Dubai Law No. 7/2006 on Property Registration in the Emirate of Dubai, which are freehold, leasehold (usufruct) and Mustaha rights. In the UAE, on a general basis, only UAE or GCC nationals are permitted to own property throughout the whole of the UAE. Each emirate has its own specific regulations regarding foreign property ownership, and in Dubai, a foreign owner (i.e., a non-UAE or GCC owner) can own land in either of the three types in designated areas or in freezones only as listed in Dubai Regulation No. 3/2006 on the Identification of Areas of Non- Citizens to Own Real Estate in Dubai. With regards to property ownership by foreign companies in the relevant designated areas, they require registration either onshore in Dubai or offshore in JAFZA to acquire property in any of the three categories.

### 1.3.2 Registration of disposition

#### Resale properties

In the Emirate of Dubai, property dispositions must be registered in the Real Property Register maintained by the Dubai Land Department in Dubai (DLD), as per article 9 of Dubai Law No. 7/2006. Failure to register the disposition will render any sale transferring ownership invalid as per article 3(1) of Dubai Law No. 13/2008 on the Interim Real-Estate Register in the Emirate of Dubai. Subsequently, each emirate charges its own fees for registration and has its own procedures that govern the process of transfer of title.

#### Off-plan properties

For off-plan properties, developers are required to register all dispositions in the Interim Register maintained by the Dubai Land Department as per Dubai Law No. 13/2008, with clarity provided in Dubai Executive Council Decision No. 6/2010 on the Approval of the Executive Regulation of Dubai Law No 13/2008 and the Regulation of the Initial Cadastral Register in the Emirate of Dubai.

Prior to disposition, off-plan projects must be registered under the Oqood Management system developed and monitored by the DLD through the Real Estate Regulatory Agency (RERA). Typically, when a property is ready for hand-over, RERA issues a title deed of the property. However, when the property is off-plan or under construction an Oqood certificate is issued under illegal actions that may threaten their rights over the property. The process involves the developer filling in the details of the buyer and sale on the online portal, producing a sales receipt once the sale process is completed. For Oqood registration, the buyer has to pay the Oqood fee which is equivalent to 4% of the original price of the property. Once registration is complete, a certificate of registration is issued in the name of the purchaser. Once the off-plan project has been completed, the property is transferred to the Property Register and recorded in the names of the purchaser subject to DLD confirmation of purchaser having paid the full price for the property.

### 1.3.3 The process

The fundamental stages of purchasing a property in Dubai include:

- **The pre-sale agreement:** An MoU is normally signed between a buyer and seller post identification of plot. Due diligence is conducted by the buyer(s)' representatives and negotiations are conducted on terms of sale which result in the MoU. This is deemed to be binding on the parties pending signing of a sale contract (Form F).

- **In case of off-plan properties:** The buyer and the seller agree to meet at the developer's office to apply and pay for a noobjection certificate (NOC) to transfer the ownership. The developer issues the NOC after ensuring that there are no outstanding fees on the property.
- **In case of resale properties:** Registration of title transfer requires the buyer and seller to meet at Dubai Land Department (DLD) and is of the utmost significant to continue the transfer of ownership. The Contract Form F, the sale contract, will be signed and is submitted along with any addenda to the DLD for registration. DLD will require payment of property price from buyer to seller (security deposit to hold the property) usually by way of managers' cheque and to take it off the property market.
- **Issuance of new title deed:** This is the final step where a new title deed is issued in the buyer's name, effectuating the title transfer.

Please note that due to the COVID-19 lockdown, Dubai Land Department and the Registration Trustees have initiated a new procedure by which buyers and seller can complete the registration process without needing to physically present themselves in the respective offices or even in the United Arab Emirates. This culminates in the provision of an E-Title Deed to the buyer confirming the sale of the property.

#### 1.3.4 The contract

Federal Law No. 5/1985 governs the contract for sale of property, as with any other transactional contract, and as of 1 May 2014, the Dubai Land Department implemented a new policy mandating that standard form property contracts to be used for all real estate transactions. These contracts can be supplemented by additional terms and conditions (i.e., addenda) as required. Form F is the template contract governing the transaction between the seller and the buyer. Form A governs the transaction between seller and broker and Form B is between buyer and broker. Once signed, the original executed sale contract must be provided to the Dubai Land Department for registration.

A sale contract often includes the following provisions:

- party details;
- property details (description of property);
- purchase price;
- payment schedule (in case of off-plan properties);
- settlement date;
- anticipated completion date for off-plan projects;
- apportionment of costs, including:
- down payment on purchase price (on average around 10%),,
- agency fees (2% of the selling price),
- DLD fees (4% of the selling price),
- applicable administration fees,
- registration fee (for properties below AED 500,000 this will be AED 2,000, plus 5% VAT; for properties above AED
- 500,000, this will be AED 4,000, plus 5% VAT;
- buyer and seller warranties;
- termination for default; and
- governing law/dispute resolution.

#### 1.3.5 Taxation

With the imposition of value added tax in the UAE as of 2018, real estate transactions may be subjected to the tax depending on whether the property in question is a commercial or residential

property. Sale of commercial properties will be taxed at the standard VAT rate of 5% and will be accounted for by the buyer. Residential properties are VAT-exempted and to allow real estate developers to recover VAT on residential property construction, the sale of residential properties within three years from completion is zero-rated.

### **1.3.6 Obligations and liabilities**

#### **Resale properties**

Apart from the obligation to pay the purchase price, buyers are required to pay the registration fees to the land department, unless otherwise agreed upon by the parties. The buyer is also required to pay the cost for the issuance of the title deeds and of the NOCs payable to the developer.

There are no specific statutory obligations related to real estate transactions imposed on the seller aside from the general provision governing contractual relationships. As such, any misrepresentation by the seller can impose civil and/or criminal liability.

#### **Off-plan properties**

Developers of off-plan properties are deemed to have given the warranties set out in article 26 of Dubai Law No. 27/2007 to the buyer. Further, they must also make specific disclosures to the buyer about the off-plan property, including in relation to service charges, as per article 4 of Dubai Directions No. 1/2010 Direction for Jointly Owned Property Declarations. If the information provided in the disclosure statement is found to be inaccurate within two years of date of original transfer, the developer will be liable to the buyer for damages, as per article 5 of Dubai Directions No. 1/2010.

### **1.3.7 Recourse**

#### **Resale properties**

Purchasers of resale property can seek the termination of a real estate contract based on article 272 of Federal Law No. 5/1985, which allows parties to a contract to seek its termination if the counterparty does not fulfil its contractual obligations. Article 274 of Federal Law No. 5/1985 further states the effects of such termination wherein parties must be restored to the position they were prior to the conclusion of the contract, and if not possible, compensation will be ordered.

#### **Off-plan properties**

Dubai Law No. 19/2017, which amends article 11 of Dubai Law No.13/2008, regulates the Interim Real Estate Register in Dubai and puts forward the procedures a developer would have to follow in the event of default by an off-plan investor in order to terminate the respective sale and purchase agreement.

Dubai Law No. 19/2017 has provided developers with recourses in the event of defaulting purchasers. This includes the right of the developer to terminate the SPA and deregister the SPA from the DLD's register, encouraging compliance on the part of investors. The most significant aspect of this legal instrument is the right provided to developers to terminate the SPA without the need to obtain a court order, which was previously required. On the other hand, the purchaser is not left unprotected, as Dubai Law No. 19/2017 also grants them the right to challenge the termination of the SPA in case the developer is believed to have abused its rights.

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