

Key Issues Investors Need to Know when Buying Real Estate Off Plan: Part 1 of Know Your Rights for Real Estate Investors in Dubai Guide

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The Guide provides companies and individuals with the vital information they need when considering investing in real estate in Dubai and seeks to answer some of the important questions that investors have regarding their real estate investments and dealings with Dubai Land Department ('DLD'), Real Estate Regulatory Agency ('RERA'), developers and other relevant parties. The Guide has been published in English and Arabic.

Over the course of next few months, we will be producing a series of articles aimed at keeping our clients informed on Dubai real estate laws and current DLD and RERA policies by exploring a number of legal topics mentioned in our Guide.

This article is Part 1 of the series and will focus on 'Key Issues Investors Need to Know when Buying Real Estate Off Plan' as stated in page 19 of the Guide.

1. Is the real estate project registered with RERA?

Every real estate project in Dubai must be registered with RERA and the fee for registration is currently set at AED 150,020, which must be paid at the time of submission of the project registration application. The investor can directly check the registration details of the project on the website of DLD (www.dubailand.gov.ae).

Failure to register the real estate project with RERA, or conducting development activity without a licence, can lead to a fine of AED 100,000 or criminal sanctions resulting in a prison sentence pursuant to the Escrow Law (Law No. 8 of 2007 concerning Escrow Accounts of Real Estate Developments in Dubai, 'Escrow Law').

2. Is there an escrow account for the project? What is the escrow account number and the name of the escrow account agent?

Any developer who intends to sell units off plan in the development project is required to open a separate escrow account for the project with an escrow agent (bank or financial institution) accredited by the DLD, pursuant to the Escrow Law. The developer must deposit in the escrow account all amounts received by the third party purchasers of off-plan units and loan payments funded by financiers for the purpose of construction of the development project. The amounts deposited in the escrow account shall be allocated exclusively for the construction of the development project and settlement of project financing payments. Every developer is required to register in the RERA TAS system, where it must record all financial transactions.

The details of the project escrow account number must be stated in the sale and purchase agreement between the developer and investor, and any funds received from the investor must be directly deposited in the designated escrow account for the project. Furthermore, the investor can directly check the details of the escrow account agent and account number either on the DLD website or by using the 'Mashrooi' application launched by the DLD. The application lists all registered developers in Dubai, together with a list of all its registered projects and important details such as construction status of the specific project, escrow account details, etc.

3. What is the percentage of completion of the project and the expected date of completion?

The DLD website offers a project status tracking service, which allows investors to track the current status of the completion of real estate developments in Dubai by entering details of either the land number, project number or project name. The Mashrooi smart application also contains the project status tracking service.

The expected date of completion must be stated in the sale and purchase agreement between the developer and investor, and the terms of the agreement should address issues relating to default committed by the developer to meet such estimate timeline. It is common for developers to reserve a further period in the agreement, such as up to an additional 12 months from the expected date of completion, to factor in any delay caused in project completion.

4. Is the developer registered with RERA? Does the developer own the development land or is there a development agreement between the owner and the developer?

RERA permits companies that are registered with the Dubai Department of Economic Development ('DED') with the activity of 'real estate development' or a DED Professional Licence holder to be registered as a developer for new development projects.

The title deed of the development land should be in the name of the developer. Alternatively, the developer and the owner of the development land can enter into a project development agreement. The registration fees of the project development agreement between the developer and the land owner is 4% of the current market value of the land and the execution of the project development agreement must be done at RERA. The terms of such agreement can be amended subject to prior approval of RERA. However, in the event that the developer and land owner is able to establish to RERA that the two entities have the same or related ultimate beneficiaries in their corporate structure, the registration fees may be waived by RERA at its discretion.

5. Does the developer have the required permits and approvals from Dubai Land Department and RERA to sell off-plan in the relevant project?

If the developer intends to sell off plan, RERA currently provides the developer with four options, namely:

1. completion of 20 per cent of the construction works of the project by the developer and thereafter applying to RERA for its no objection certificate to sell off plan;
2. cash deposit of 20 per cent of construction value of the project in the designated escrow account and thereafter applying to RERA for its no objection certificate to sell off plan;
3. submission of a bank guarantee to RERA equal to 20 per cent of the construction value and thereafter applying to RERA for its no objection certificate to sell off plan; or
4. submission of application to RERA seeking its no objection certificate to sell off plan without meeting the requirements set out above in (a), (b), or (c) but on the condition that the developer will deposit all received monies from third party sales into the designated escrow account and provided that the developer will not withdraw any money from the escrow account until and unless a target of 20 per cent of the construction works of the project has been successfully completed.

While a detailed analysis of the issues involved in the acquisition of real estate 'off-plan' is beyond the scope of this series and the Guide, we are confident that investors will find these materials a useful guide to their initial investment considerations and directing them to key issues.

We look forward to presenting Part 2 of this series in our next Law Update issue.

Al Tamimi & Company's real estate team regularly advise and assist clients with developer and project registration at RERA and related authorities. For further information please contact Mohammed Kawasmi, Partner (m.kawasmi@tamimi.com) or Aruna Mukherji, Associate (a.mukherji@tamimi.com).