

Explanatory Notes on
Article (11) of Law No. (19) of 2017 Amending
Law No. (13) of 2008
Regulating the Interim Real Property Register in the Emirate of Dubai¹

The Dubai Real Property sector has been a source of attraction for investors, offering them promising investment opportunities and considerable financial returns thanks to the effective tools that regulate this sector, its vitality, and the confidence of its stakeholders. The Dubai Real Property sector has deservedly become one of the world's leading sectors. Of the main investment attractiveness factors of the Dubai Real Property sector is the legislation which regulates this sector, and which plays a pivotal role in sustaining its growth and prosperity. The Dubai Real Property legislation is among the most developed worldwide and is characterised by its great flexibility and adaptability to changes in the Real Property market. Most significant of such legislation are Law No. (13) of 2008 Regulating the Interim Real Property Register in the Emirate of Dubai, its amendments, and its Implementing Bylaw; and Law No. (8) of 2007 Concerning Escrow Accounts for Real Property Development in the Emirate of Dubai.

The Emirate of Dubai has been a local and regional forerunner in developing a legislative framework to regulate Off-plan Sale of Real Property Units, by issuing the above-mentioned Law No. (13) of 2008. The said Law has been issued to accommodate the need to recognise this type of modern-day Real Property dispositions. Law No. (13) of 2008 regulates Off-plan Sale of Real Property, being an important tool in supporting and stimulating the Real Property sector and in driving Real Property investment. Under an Off-plan Sale agreement, a Developer is obliged to build Real Property Units on the land that he owns or has the right to develop, and to transfer the ownership of such Real Property Units to its purchasers in accordance with agreed-upon specifications and schedules. The Developer performs these obligations in consideration of the payment by the purchasers of the price of the Real Property Units in instalments as per agreed-upon construction-linked payment schedules.

Off-plan Sale is an innovative tool to conclude Real Property dispositions in respect of Real Property Units that are designated as off-plan or that are under construction. The main advantage of this tool is that it serves the interests of both Developers and purchasers. For a

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¹Every effort has been made to produce an accurate and complete English version of this legislation. However, for the purpose of its interpretation and application, reference must be made to the original Arabic text. In case of conflict, the Arabic text will prevail.

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purchaser, an Off-plan Sale agreement enables him to purchase a Real Property Unit in instalments that suit his financial ability, which would have otherwise been unattainable if he had to pay for it in a lump sum, given the high prices of Real Property Units. For a Developer, an Off-plan Sale agreement enables him to raise the finance required for implementing Real Property development projects through the instalments paid by purchasers. This spares Developers the need to acquire loans from banks and financial institutions and the subsequent need to provide collaterals and to pay high interest rates which constitute a burden for Developers and often require a long time to pay.

The main objective of issuing the above-mentioned 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. Hence, the aforementioned Law and its Implementing Bylaw include provisions stipulating the obligations of Developers and purchasers, as well as the consequences of breaching such obligations, thus guaranteeing the achievement of the objective of Off-plan Sale agreements, namely, completing the construction of the subject Real Property Units and transferring their ownership to purchasers.

It is established that a purchaser's timely payment of the instalments of the Real Property Unit's price is one of the fundamental contractual obligations under an Off-plan Sale agreement; and that his failure to fulfil this obligation would disrupt the progress of the Real Property project and delay its implementation, resulting in losses for the Developer. In view of this, Article (11) of Law No. (13) of 2008 Regulating the Interim Real Property Register in the Emirate of Dubai, as amended by Law No. (19) of 2017, prescribes a set of procedures and measures that the Developer may take against a defaulting purchaser without recourse to courts or arbitration.

By the powers vested in the Supreme Legislation Committee in the Emirate of Dubai under its establishing Decree No. (23) of 2014, and upon the request addressed to it by the Director General of the Dubai Courts Ref. No. (DC/OUT/2018/0000083), dated 13/03/2018, we provide hereunder our interpretation of Article (11) of Law No. (19) of 2017.

Article (11)

Article (11) of Law No. (19) of 2017 Amending Law No. (13) of 2008 Regulating the Interim Real Property Register in the Emirate of Dubai stipulates the following:

- a. Where a purchaser fails to fulfil his contractual obligations under an Off-plan Sale agreement concluded with a Developer, the following rules and procedures will apply:

1. The Developer must notify the DLD of the purchaser's non-performance of his contractual obligations. This notification must be submitted on the form prescribed by the DLD for this purpose and must include all details of the Developer and purchaser; a description of the Real Property Unit subject of the Off-plan Sale agreement; a detailed account of the contractual obligations breached by the purchaser; and any other details determined by the DLD.
2. Promptly upon receipt of the notification and verifying that the purchaser is in breach of his contractual obligations, the DLD must:
 - A. serve a thirty (30) days' notice on the purchaser requiring him to fulfil his contractual obligations towards the Developer. The notice must be in writing and dated; and must be delivered to the purchaser either in person or by registered mail with acknowledgement of receipt, email, or any other means prescribed by the DLD; and
 - B. where possible, mediate an amicable settlement between the Developer and purchaser, in which case such settlement must be attached as an addendum to the Off-plan Sale agreement and must be executed by the Developer and the purchaser.
3. If the notice period mentioned in sub-paragraph (a)(2)(A) of this Article expires and the purchaser fails to fulfil his contractual obligations or to reach a settlement with the Developer, the DLD will issue an official document in favour of the Developer confirming the following:
 - A. the Developer's compliance with the procedures stipulated in paragraph (a) of this Article; and
 - B. the percentage of completion of the Real Property Unit subject of the Off-plan Sale agreement, calculated in accordance with the relevant standards and rules adopted by RERA.
4. Upon receiving the official document referred to in sub-paragraph (a)(3) of this Article, and based on the percentage of completion, the Developer may take any of the following measures against the purchaser without recourse to courts or arbitration:
 - A. Where the percentage of completion of the Real Property Unit exceeds eighty percent (80%), the Developer may:
 1. maintain the Off-plan Sale agreement concluded with the purchaser, retain all amounts paid by the purchaser, and claim the balance of the price of the Real Property Unit from the purchaser;

2. request the DLD to sell the Real Property Unit, subject of the Off-plan Sale agreement, by public auction to collect the remaining amounts payable to the Developer; and hold the purchaser liable for the costs arising from the sale; or
 3. unilaterally terminate the Off-plan Sale agreement, retain up to forty percent (40%) of the value of the Real Property Unit stipulated in the Off-plan Sale agreement, and refund any amounts in excess of this to the purchaser within one (1) year from the termination of the agreement or within sixty (60) days from the date of resale of the unit to another purchaser, whichever occurs earlier.
- B. Where the percentage of completion of the Real Property Unit is between sixty percent (60%) and eighty percent (80%), the Developer may unilaterally terminate the agreement, retain up to forty percent (40%) of the value of the Real Property Unit stipulated in the Off-plan Sale agreement, and refund any amounts in excess of this to the purchaser within one (1) year from the termination of the agreement or within sixty (60) days from the date of resale of the unit to another purchaser, whichever occurs earlier.
- C. Where the Developer has commenced work on the Real Property project, having taken hold of the construction site and started construction works in accordance with the designs approved by the Competent Entities, and the percentage of completion of the Real Property Unit is less than sixty percent (60%), the Developer may unilaterally terminate the Off-plan Sale agreement, retain up to twenty-five percent (25%) of the value of the Real Property Unit stipulated in the Off-plan Sale agreement, and refund any amounts in excess of this to the purchaser within one (1) year from the termination of the agreement or within sixty (60) days from the date of resale of the unit to another purchaser, whichever occurs earlier.
- D. 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 terminate the Off-plan Sale agreement, 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 agreement.
- b. Where the Real Property project is cancelled pursuant to a reasoned decision of RERA, the Developer must refund all payments made by the purchasers in accordance with the procedures and rules stipulated in the above-mentioned Law No. (8) of 2007.

- c. The rules and procedures stipulated in this Article do not apply to land sale agreements which do not involve any Off-plan Sale. Land sale will continue to be governed by the terms of the land sale agreements concluded by the parties thereto.
- d. The rules and procedures stipulated in this Article will apply to all Off-plan Sale agreements concluded prior to or after the commencement of this Law.
- e. The rules and procedures stipulated in this Article are considered part of public order, and failure to comply therewith will result in nullity of the legal act in question.
- f. The rules and procedures stipulated in this Article will not preclude the purchaser from having recourse to courts or arbitration where the Developer abuses any of his powers under this Article.

Interpretation of Article (11) of Law No. (19) of 2017

The need for amending Article (11) arose given the array of varied judicial interpretations thereof and the divergent methods of implementation thereof by courts in the course of hearing and determining claims brought before them in respect of disputes on Off-plan Sale agreements. The disputes mostly arose in connection with the Developer's right to unilaterally terminate the Off-plan Sale agreement where the purchaser was found in breach of his contractual obligations. In an attempt to ensure that Article (11) is clearly understood and that its interpretations do not conflict in a way that would create negative repercussions on the Real Property market in the Emirate of Dubai, there has been more than one amendment to that article, the latest of which is made under the above-mentioned Law No. (19) of 2017.

- I. Paragraph (a) of Article (11) stipulates the rules and procedures that must be followed where a purchaser fails to fulfil his contractual obligations under an Off-plan Sale agreement concluded with a Developer. The article states the actions to be taken by both the DLD and the Developer in the event of the purchaser's non-performance of his contractual obligations, particularly defaulting in paying the instalments of the price of the Real Property Unit on their due dates. These actions will be taken in the following order:
 - 1. The Developer will notify the DLD of the purchaser's non-performance of the contractual obligations. This notification must be submitted on the form prescribed by the DLD for this purpose and must include all details of the Developer and purchaser; a description of the Real Property Unit subject of the Off-plan Sale agreement; a detailed account of the contractual obligations breached by the purchaser; and any other relevant details determined by the DLD.
 - 2. Upon receipt of the above-mentioned notification, the DLD will verify, by all means necessary, the validity of the Developer's claims that the purchaser is in breach of the

agreement. Where it is established that the purchaser is in breach of his contractual obligations, the DLD must take the following actions in this order:

- The DLD will serve a notice on the purchaser requiring him to fulfil his contractual obligations towards the Developer within thirty (30) days from being served with this notice. The purpose of this notice is to give the purchaser sufficient time to fulfil his contractual obligations, and prevent the Developer from taking the measures stipulated in the Law against the purchaser. Sub-paragraph (a)(2)(A) of Article (11) prescribes the conditions for the validity of this notice, including that it must be in writing and dated; and that it must be delivered to the purchaser either in person or by registered mail with acknowledgement of receipt, email, or any other means prescribed by the DLD.
- Where possible, the DLD will mediate an amicable settlement between the Developer and the purchaser. In this regard, the DLD must exert adequate efforts and discuss all available options to enable the parties to reach an agreement. Where an amicable settlement is reached, it must be attached as an addendum to the Off-plan Sale agreement and must be executed by the Developer and the purchaser. This addendum will constitute an integral part of the Off-plan Sale agreement and will be binding on the parties thereto.
- Where the notice period expires and the purchaser fails to fulfil his contractual obligations, and no amicable settlement is reached between the purchaser and the Developer, the DLD will issue an official document in favour of the Developer confirming the Developer's compliance with the procedures stipulated in paragraph (a) of Article (11), and the percentage of completion of the Real Property Unit subject of the Off-plan Sale agreement. The DLD may issue this official document only upon verifying that the purchaser has actually breached his obligations under the Off-plan Sale agreement concluded with him.

The purpose of issuing the Developer with this document is to enable him to take legal action against the purchaser without recourse to courts or arbitration. Moreover, this document provides legal protection for the Developer, strengthening his legal position in case of any action taken against him by the purchaser.

3. Upon receiving the official document referred to in the previous paragraph, and based on the percentage of completion of the Real Property Unit subject of the Off-plan Sale agreement, the Developer may take any of the following measures against the purchaser without recourse to courts or arbitration:

- a. Where the percentage of completion of the Real Property Unit exceeds eighty percent (80%), the Developer may:
- maintain the Off-plan Sale agreement concluded with the purchaser, retain all amounts paid by the purchaser, and claim the balance of the price of the Real Property Unit from the purchaser. The Developer may take any legal action that enables him to collect the remaining amounts payable to him by the purchaser. Upon receiving these amounts, the Developer must register the Real Property Unit in the name of the purchaser on the Real Property Register maintained by the DLD, or alternatively, the DLD may register the Real Property Unit in the name of the purchaser on its own initiative or upon the request of the purchaser;
 - request the DLD to sell the Real Property Unit, subject to the Off-plan Sale agreement, by public auction to collect the remaining amounts payable to the Developer; and hold the purchaser liable for the costs arising from the sale. The DLD will conduct the sale by auction in accordance with the relevant procedures adopted by it, without the need for a court ruling;
 - unilaterally terminate the Off-plan Sale agreement. It is well established that the Developer's right to terminate the agreement in this case is granted by law and does not require the purchaser's consent to be established. The termination will be effected by the DLD since the agreement is registered with it on the Interim Real Property Register maintained and managed by it. Moreover, this termination of the Off-plan Sale agreement does not require a court ruling or an arbitration award, but it takes effect at the Developer's own will. In addition to terminating the agreement, the Developer will have the right to deduct, through the Escrow Agent, up to forty percent (40%) of the value of the Real Property Unit stipulated in the Off-plan Sale agreement from the amounts deposited by the purchaser in the Escrow Account of the Real Property project, in which case, the Developer must refund any amounts in excess of this to the purchaser within one (1) year from the termination of the agreement or within sixty (60) days from the date of resale of the unit to another purchaser, whichever occurs earlier. The Developer's right to deduct the above percentage does not require a court ruling to be established, as it is granted by law. The Developer may exercise this right at his own will, as a legitimate means of execution against the property of a purchaser who is in breach of his contractual obligations.

- b. Where the percentage of completion of the Real Property Unit is between sixty percent (60%) and eighty percent (80%), the Developer may unilaterally terminate the agreement, retain up to forty percent (40%) of the value of the Real Property Unit stipulated in the Off-plan Sale agreement, and refund any amounts in excess of this to the purchaser within one (1) year from the termination of the agreement or within sixty (60) days from the date of resale of the unit to another purchaser, whichever occurs earlier. The exercise of this right has the same grounds referred to in paragraph (a) above.
 - c. Where the Developer has commenced work on the Real Property project, having taken hold of the construction site and started construction works in accordance with the designs approved by the Competent Entities, and the percentage of completion of the Real Property Unit is less than sixty percent (60%), the Developer may unilaterally terminate the Off-plan Sale agreement, retain up to twenty-five percent (25%) of the value of the Real Property Unit stipulated in the Off-plan Sale agreement, and refund any amounts in excess of this to the purchaser within one (1) year from the termination of the agreement or within sixty (60) days from the date of resale of the unit to another purchaser, whichever occurs earlier. The exercise of this right has the same grounds referred to in paragraph (a) above.
 - d. 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 Off-plan Sale agreement, retain up to thirty percent (30%) of the amounts paid to him by the purchaser, and return any amounts in excess of this to the purchaser within sixty (60) days from the termination of the agreement.
- II. Paragraph (b) of Article (11) stipulates that where the Real Property project is cancelled pursuant to a reasoned decision of RERA, the Developer must refund all payments made by purchasers in accordance with the procedures and rules stipulated in Law No. (8) of 2007 Concerning Escrow Accounts for Real Property Development in the Emirate of Dubai, which requires the Developer to open an Escrow Account for the Real Property project in which the amounts paid by the purchasers of off-plan Real Property Units are deposited. Under the said Law, the amounts deposited in the Escrow Account are exclusively dedicated to the construction of the Real Property project, and no attachment may be imposed on these amounts for the benefit of the creditors of the Developer. The above-mentioned Law No. (8) of 2007 also requires an Escrow Agent to take the necessary measures to protect the rights of depositors and ensure the depositors are refunded their payments in the event of any emergency situation that results in non-completion of the Real Property project, including cancellation of the project by RERA.
- III. Paragraph (c) of Article (11) determines the scope of application of the Article (contracts governed by the article), stating that the procedures, rules, and provisions stipulated

therein exclusively govern the Off-plan Sale agreements of Real Property Units to which the above-mentioned Law No. (13) of 2008 and its amendments apply, and which must be registered on the Interim Real Property Register. The said paragraph clearly stipulates that Article (11) does not apply to undeveloped land sale agreements, and that this sale will continue to be governed by the terms agreed upon by the parties thereto.

- IV. Paragraph (d) of Article (11) identifies the temporal scope of the Article, expressly stating that the procedures and rules stipulated in Article (11) apply to all Off-plan Sale agreements of Real Property Units concluded prior to or after the commencement of the above-mentioned Law No. (13) of 2008.

The retroactive effect stipulated in this paragraph is an exception to the general principle of non-retroactivity of legislation, which limits the temporal scope of legislation to events and actions that occur after the commencement of the relevant legislation rather than the legal positions established before such commencement. This principle is established in Article (112) of the UAE Constitution, which stipulates: "Laws will apply only to occurrences that take place as from their commencement date, and may not have retroactive effect. When necessary and in other than criminal matters, the law may stipulate otherwise." This Article provides for the non-retroactivity of legislation, but authorises an exception to this principle, in accordance with the requirements of the public interest and in other than criminal matters, through applying new laws to occurrences and actions pre-dating their commencement. Paragraph (d) of Article (11) explicitly states that the rules and procedures stipulated in this Article apply to all Off-plan Sale agreements concluded prior to or after the commencement of the above-mentioned Law No. (13) of 2008. Accordingly, all such agreements are governed by the amending provisions prescribed under the above-mentioned Law No. (19) of 2017.

The applicability of the procedures stipulated in this Article to all Off-plan Sale agreements, including those concluded prior to the commencement of the above-mentioned Law No. (13) of 2008, entails that they must be observed, as amended, by parties to these agreements, by the Concerned Government Entities, and by the courts. This means that courts must observe the procedures prescribed by the amended Article (11) for purposes of determining claims in respect of which no final definitive judgements have been rendered, and that these procedures do not apply to claims for which final definitive judgements are delivered. In other words, courts must apply Article (11), as amended by Law No. (19) of 2017 retroactively, to all claims being heard by them and relating to termination by Developers of Off-plan Sale agreements on grounds of breach by purchasers of their contractual obligations, whether this breach is committed prior to or after the commencement of the said amended Law. This interpretation is consistent with paragraph (1) of Article (1) of Federal Law No. (11) of 1992 Issuing the Civil Procedures Code and its amendments, which stipulates that procedural laws apply to the claims which have not been determined and to the proceedings which have not been conducted prior to the date of commencement thereof, considering that the rules prescribed by Article (11) of Law No. (19) of 2017 are procedural rules.

- V. Paragraph (e) of Article (11) has established the procedures and rules stipulated therein as part of public order, stipulating that failure to comply therewith will result in nullity of the legal act in question. This means that the provisions of Article (11) are imperative norms and that parties to Off-plan Sale agreements may not agree to any terms, procedures, or rules in violation thereof. The legislative rationale behind this stipulation lies in the fact that the rules and procedures stipulated by Article (11) protect the vital and essential interests not only of parties to Off-plan Sale agreements, but of the society at large, given that it guarantees the stability and prosperity of the Real Property sector. This is why the legislator stated that Article (11) is part of public order and that failure to comply therewith will result in nullity of the legal act in question.

Establishing the procedures and rules prescribed by Article (11) as part of public order has rendered the rules and procedures prescribed by the above-mentioned amending Law No. (19) of 2017 enforceable and applicable to all court claims in respect of which no final definitive judgement has been rendered. It is an established principle that procedures relating to contracts are governed by the laws in force at the time of concluding these contracts. However, where a law is issued which stipulates procedures that relate to maintaining public order, these procedures will apply to all contracts that are valid as of the commencement date of the law, even if these contracts have been concluded before that date. Failure to observe this principle would result in applying invalid rules and procedures that conflict with public order, and that are expressly deemed null and void by virtue of law.

- VI. Paragraph (f) of Article (11) protects the purchaser's right to have recourse to courts or arbitration where the Developer abuses his right to take, against the defaulting purchaser, the procedures and measures prescribed by Article (11). This demonstrates the legislator's keenness on striking a balance in protecting the interests, rights, and legal positions of all stakeholders in the Real Property sector. The rules and procedures prescribed under Article (11), which secure the rights of a Developer where a purchaser is in breach of his contractual obligations, are subject to judicial review and to nullification by the judiciary where it is established that the Developer has abused the powers vested in him by this Article to encroach upon the rights of the purchaser.