



The Objective Scope of the Preliminary Contracts on Housing Units in the Investment Projects (A comparative study)

Raghda Oda SHAHİB¹ & Tariq Kazem AJEEL²

Keywords

the preliminary contract on the housing units, the objective scope of the contract, and consequences for breaking the parties' obligations.

Article History

Received

28 May, 2023

Accepted

30 Jun, 2023

Abstract

The conclusion of this study is that a residential unit purchase contract is one of those contracts in which the buyer is unaware of the location since it has not yet been completed. But it's likely that it will stay in place. Does it fulfill both the true need for it and the desire to make this unfair connection more equitable?

The lawmaker stepped in to specify the contract's substitutive scope and mandated that the seller include it in the agreement. Here is a collection of facts and figures about the store. While the Iraqi legislator did not regulate this contract in a particular legislation but rather the general rules apply, which are not regarded as sufficient and guarantor of the right of the contractual parties, the seller was forced to include in the contract and establish a penalty for breaking it.

1. Introduction

1.1. Research scope

The objective scope of the preliminary contract that indicated the housing units under contract was limited by French law and comparative state law. The legislation has stipulated that the contract must include a number of dates and specific information that the parties must communicate and be specified in the preliminary contract. It also imposes penalties for violating these rules. These rules and information are made a requirement by the legislature in order for the contract to be legal. to provide its members access to its power and legislative security.

1.2. The research problem

The research problem is hidden in the lack of his parties knowing the information on a unit as not existing during the contract time. Due to its probable existence in the future. And not knowing the objective scope of the contract. Has the law permitted them to give up the contract after its signing? What is the outcome after such a retreat? Or violating the contract of penalty? Under not being a particular

¹ Corresponding Author. ORCID: 0000-0002-9380-6438. University of Thi-Qar, College of Law, ragdaoda@gmail.com

² ORCID: 0000-0002-4487-8937. Prof. Dr., University of Thi-Qar, College of Law, tark1980_2005@yahoo.com

law or common, the Public can fix this destined contract in the Iraq law, and the public rules are not considered enough during the application of this contract?

1.3. Research method

In order to examine this text and identify similarities and differences between Iraqi legislation and the comparative laws, this research will employ the analytical approach of examining the legal language in Iraqi legislation.

1.4. Research plan

We discuss dividing the research into two parts in order to limit the objective scope of the preliminary contract. The purpose of the first part is to make the information and fundamental terms of the contract clear, while the second part includes information on the punishment for members who violate the preliminary contract's

2. First Requirement: The information and the basic data of the preliminary contract

A condition imposed by the French legislator and the comparative state laws makes a set of facts mandatory and specified in the preliminary contract in a detailed form. Moreover, emphasize the significance of the delegate description contained in the preliminary contract.

to provide a production to a future buyer who is unaware of the terms of the contract. In order to assure the investor's seriousness and the viability of his investment idea, the legislator imposes a requirement that the buyer be informed of these details via the contract. the capacity to compare and highlight any discrepancies between the draft contract and the final contract later. ⁽¹⁾ They describe in detail the condition of residential units. residential unit's purchase price and the loan agreement's terms. The date on which the final contract will be made must be included in the preliminary contract. If this happened, the seller might not have given a true account of the contract's formation date. He needs to provide the required evaluation duration in order to create the final contract. Due to the difficulty in providing accurate notification, the seller designates a date as the deadline for making the final contract. ⁽²⁾

The French law stated in articles (15, 25, 26, 261 R) of the French law on building and contraction and the article (2/31) of the executive decision issued on 22 December 1967 on the contents of the preliminary contract. It has made a condition of enlisting basic data in the contract related to the state of the residential unit, building quality, the required period to implement the project building, and the price of the residential price confiscated for the sake of the one who wants to buy and notify the estate situation and the area of the residential unit concerning the project in public. And the article (3,29) states of the executive issued on 22 December 1967 concerning the requirements which must include in the preliminary contract. ⁽³⁾

The details of the residential unit included the room number. Building area of the origin of the residential unit required and state the material quality used in the project building. And the legislator makes a condition to notify the evaluated price

for one unit and make a condition for the limited notify the conditions and the origins of which the evaluated prices will be pre-evaluated with the limits and the regulation mentioned in the articles (15,261 R) of the French law residential and building. ⁽⁴⁾ And the borrowing contract of which the investor (estate developer) states he will obtain it and change his benefit to the buyer. With mentioning the borrowing contract and its capital and the borrower names.

And articles (261-30) of the (67-3) law issued on 3/1/1967 included estate sale under construction. On a condition that he must notify the buyer for the period of a month at least from the date of the final unit signature. And the final contract signature is related without an upfront period in the preliminary contract. Thus, the notification on the project will be a cause to give up the buyer the final sake with recourse fund of the price. ⁽⁵⁾

In Algerian legislation the importance of mentioning the essential issues which have to be agreed upon and included the contract with the agreement on the contract nature. Being a contract without material rights in spite it is mentioned as an estate. It is required on personal obligations only between the two parties being unregistered contract. So, the agreement on the contract nature makes the estate developer. obliged with the law rules (4-11) organized by this contract in the article (35,30) and it obliged with the text executive No (13-431) which signifies the contract form on the right keep contract. And it has to be agreed on the location, being unmentioned over the contract period and it has to go along with the agreement thought out the basic regulations. Of unit area and the location and all the details which the buyer wants or the right keeper to make a condition in the building. Also, the argument on the residential unit price or estate in general. ⁽⁶⁾ Article (33) makes the condition of the law (11-4) upon the final contract after three months of partial receiving for a unit.

As for Imaret Ajman legislation, it has stated frankly on the date obliged mentioned in the record of estate unit registration in detail. They are data related with each other of the contract parties, representatives by names, telephone numbers, email addresses and trade permission number with the registration number in the record of develops concerning a developer and the number of trade permission if the character is normal and other are related with the details of the estate unit, representative by area and value price for a unit⁽⁷⁾ with a condition of final contract signature over fifteen days from the date of occupied record. ⁽⁸⁾

In Iraq, the Iraqi law did not fix the objective scope of the preliminary contract in the general laws and not in particular laws. It is not the penalty for violating this content and not organizing the relation among its members. It does not return to the general rules, as the articles (1/91) make a condition of the Iraqi civil law including primary contract-making between the contractors or one of them in the future. It has been obliged to notify the essential issues of the contract and the period of making a contract. This is the difference between French law and the regulation that organized this contract which is not limited to signifying the essential issues for the contract in general. It has been elaborated in mentioned the details and organized for the violating it for the increasing of the rights protection of the buyer.

The article (1/128) stated from as " it has been obliged to be in a position of responsibility with signification ignoring the extreme ignorance" and this means it has been to mentioned the details of the preliminary contract and what related to the area, price, building, amount of the guarantee deposit and the means to pay back the price and the date of making final contract and all the details mentioned before to object the ignorance and doubt from the seller. And let the buyer get knowledge of it and check or examine by him or any person chooses and the scope to what related to his research or what he needs to obtain a residence chance go along with his finance power or the main and service rooms and its related and state what has been mentioned in the contract at any part of the building and leave doubt and fault and stop default activities. ⁽¹⁰⁾

3. Second Requirement: The members' breaking the preliminary contract by the objective scope for the contract

To implement the contract correctly, it needs to be implemented by the members upon the responsibilities imposed on around to what law is planned. As the French law and the legislations of the comparative states for the objective scope to the preliminary contract mentioned on the residential units as been said. It is represented by preparing the contract of the final sale mentioned don estate as may be questioned despite this particularity of this contract what is the penalty of violating these regulations and date which have been condition by the legislator? What is the importance of the condition by the legislator to this date and regulations?

The French legislator, when frankly stated in the article (26-261) of the building and residence law on condition to mention the period of the preliminary contract. He also organized not to mention the contract invalidity ⁽¹¹⁾ as he makes a condition of signifying the building period in the contract, for seller protection, it is natural to decide the invalidity for his sake. ⁽¹²⁾

And article (261-11) stated the following" not be along with the rules of this contract consequence violating the contract" and not take a pretext of this invalidity but by the buyer before completing the work. And article (12) of the same law is determined as every condition opposed to the article (11) rules is considered unwritten, so the penalty required on opposing article (110) and the partial invalidity ⁽¹³⁾ and let the buyer choose between the two options.

The French legislator has fixed the states in which the buyer has the right to get back the amount of the guarantee. As the buyer has the right to give up the preliminary contract. Over ten days from the date of contract signature in the following states. ⁽¹⁴⁾ The importance of signifying the objective scope by the legislator. It is to protect the buyer from any chance of being deceived or defrauded by real projects and to be not obliged finally of this right. So, he organized a penalty over losing the guarantee deposit ns the state as follows:

If the giving up by a notice from the seller is not archived one of the conditions that have been agreed upon in the preliminary contract. (15) either if the buyer can't obtain the loan or the buyer delayed not signing the final contract over the signified period of the preliminary contract. If the kind of building is short under the residential unit value with a rate of more than 10% .⁽¹⁶⁾ Either a unit is

increased with a rate of 5% as expected and not implemented one of the accessories elements which have been agreed on and the buyer will lose the guarantee amount and he has no right to get back it in case he is delayed on signing the contract.

The Algerian legislator has organized to violate the law texts of management penalties. If one of the contractors failed to implement his obligation of building according to the signified period of the preliminary contract. either in case not going along with the description of the building signified in the contract. It has to be a civic penalty represented by compensation or violation. ⁽¹⁸⁾

In case not be one of the contractors to his obligation, the other contractor has to give up the contract in sequence effect and the justice has the evaluation power not to judge due asking only. As Article 119 of the Algerian civil law stated on the contracts obliged by both parties if one failed to implement an obligation, the other party has the right after noticing asking of implementing the contract or termination with compensation. And it can be divided into two kinds agreed or judicial termination. ⁽²⁰⁾

And the law of Imaret Ajman stated upon the cases of canceling the estate developed project. Of it, the developer delayed starting to implement the estate project, either by issuing a decisive decision from a court by canceling the project or organizing upon the canceling of the estate project to release the developed of any responsibility in whatever kind towards other of office. ⁽²¹⁾

At the same law, article (64) stated that a prince will issue a prince's decision by fees, defaults, and charges upon violating the rules of the law. And the law also grants the buyer the right to cancel sales and compensation and get back the whole payment he pays keeping his right to ask for compensation. In case of the essential difference with the descriptions of the estate unit. Not like the description represented by the developer in the advertisement of this estate project, or by the shortage of the estate until the area is more than 20% of the net area or modifying the plans without getting the permission of the authored power, or defaults in the estate developing project. ⁽²²⁾

And the Iraqi legislation, the article (first /28) of the investment law in case of opposed the regulations mentioned in the investment law. In case of repeating the charge, either by scaling by the investor or the committee has the right to draw the investment certificate which has already been issued with maintaining the right of others to ask for compensation due to the harm caused by the chain. It is without violation the fines and other compensation (canceling with compensation with the price getting back) have been situated by the other laws. ⁽²³⁾

Second: the same article, makes a punishment of drawing the investment certificate on the investor who writes down uncorrected fault information.

4. Prologue

This study has summarized the topic (The objective Scope of the preliminary contract on housing units in the investment projects) into several recommendations and we can summarize into:

4.1. Conclusions

- The French and Algerian legislators and the legislator so Imaret Ajman the objective scope for the preliminary contract and he is obliged to the seller to mention and state all that is related in the contract to erase the doubt from the unit and let the buyer know all details which he wants to buy in the future and to ensure of the project seriousness to not fall victim to the real projects. Opposite to the Iraqi legislator who applies the general rules which conditioned the essential information for the sale not the sales in detail as we have seen in the comparative legislations and these rules are not enough to protect the buyer.
- The comparative national laws have given the right to cancel the contract and the buyer getting back what is kept of the grate deposit without discount in case of failure at the seller or change of what has mentioned of information. It also makes the final density of the contract void if not mentioned a certain date for buyer protection. While the Iraqi interment law stated two kinds of plenty imposed upon the defaulted investor: it is management penalties represented by drawing the investment permission another civic penalty represented by canceling with imposing a fine upon the failed investor to his reposit, with the right to ask for compensation and the general rules apply in the buyer right to ask for canceling with compensations in case of charge has been done by the seller.

4.2. Recommendations

We suggest for the Iraqi legislator the following legislative text;

- It is obliged for the seller to mention all the delegate descriptions about the essential unit, of unit area, and the real and evaluated until price and the expected increase rate and all the dates and information related to the unit description of building kind and stories and room number and project implementation period and unit delivery and bowing contract and in the opposed to not being mentioned the contract will be canceled.
- The buyer has the right to follow up with the specialized court and ask for canceling the preliminary contract and getting back the whole amount paid by him, with keeping his right for asking with compensation in the following cases:

If an essential difference has happened in the description of the preliminary contract and to what has been advisement and out the investment for the project, in case of shortage in the area of the residential unit of what has been agreed for in the residential unit. In case of modification to rely upon engirding plans without having permission required of the specialized authorities or in case not dealing with project or stop in without legitimate pretext.

Footnotes

1. See. Dr. Usama Ahmed Badr, to complete the contract. Analytical study in French and Egyptian law. Dar Al-Jamia al-Jadeeda, 2022, p. 104
2. See. Dr. Al-Sanhoori. Al-Waist in interpreting the civic law, p. 7, V1 Dar Al-Nahda al-Arabiya, carol, 1964, p 77.
3. See. Mohammed Al-Mursi Zahaar, to sell building under construction, comparative study in French, Egyptian ad Kuwait law, university of Kuwait, 1989, p. 396 and later.
4. See: Gregory Cauvin la volante deborder par la morale. L exemple de la. vente d immeubles, these pour le doctor at en droite, Arrête du 7 auot 2006 ,256 Article Electronic copy available at: <https://theses.hal.science>
5. Dawa Asia, Right Keep Contract, Estate Developing Session, College of law and Scientific Sceince, Saad Dahlab University, Al-Balada 2019, available electronically according to the link ;<http://manifest.univ-Ouargla.dz>
6. Articles No 30 stipulates that the law 4-11 dated on 17\2\2011 Algerian the following : the contract to keep rights has to be included the ownership origin of the land, real estate deed number, partial license authorities, networking and initialization certificate, date, and building permit
7. See at article (28) of the numbered law of the Emirate of Ajman No 2 in 2020 concerning the regulation of real estate development in the Emirate Ajman.
8. See Article (29) of the same law.
9. Dr. Tariq Kadhim Ajeel , Wasit in the sale of Contract. part 1. Completed all elements of contract. Al-Motawal in interpreting Civil Law . (Deep Study of Western and Islamic Jurisprudence) part 1. completed all elements of the contract, Zane law publications. Beirut 2013. P. 188 and what follow.
10. see; Dr. Hamed Shaker Mahmoud al -Taie Pre-contract negotiations human rights publications 2015.168
11. The article No (31-261) stated: of the French Building and Housing law, the guarantee amount is repaid without deduction or fine on the reserved one, if the final sale is not concluded within the period specified in the preliminary contract.
12. See, Mahmoud Hassan Sahili contractual relationship between Developer and Buyer. comparative Study to sale contract on map, study published in the law journal for and economic and law research, Article 2, Volume 1, number 1, 2021.181 -184, 181 -184.
13. see Dr. Sulaiman Marqaz, AL- Wafi in the Civil law interpretation on commitments, law contract theory, singular volition, Publish 4, Al-Salaam press, 1987, p 452.
14. See, Article (L1-271) amended law No 990-2015 dated on 6 August 2015.
15. Article (15-261).

16. Article (R 31-216).
17. Olivier Tournafond ,vente d' immeubles a construer ,DALLOZ ,2004. P.39
18. Article(65) of the law (11-04) stated that Algerian related to the rules that organize real estate promotion activity dated on the 17 /2011 on " : Administrative penalties are taken as specified under article's 64 above, after studying the files by the committee established by the minister who is responsible on housing and constructions.
19. A contract for keeping rights may be dissolved at any point during the completion of a real estate, according to the law (11-4's article 32). Any party may request that, if the other party agrees, and it may be carried out. In this scenario, the estate development could gain from an advance payment reduction of 15%. If the right holder failed not to fulfill his obligations after receiving two notices, one for each month, and failing to respond through a legal representative, it has been done by the developer.
20. For more details, see Judi Mustafa Mohammed, Developer property commitment in sales contract on design, Masters Dissertation 2020, p 96 and what follows .
21. See: Article No 23 of the law of Emirate Ajman No (2) in 2020 on Estate Developing Organization in the Emirate of Ajman
22. See: Article No 55 of the law of Emirate Ajman No (2) in 2020 on Estate Developing Organization in the Emirate of Ajman.
23. See: Dr. Tarek Ajeel , Iraqi investment law Explanation AL- Sanhuri library, Baghdad 2009, p. 142.

References

First: books and letters

1. Dr. Tariq Kadhim Ajeel , Wasit in the sale of Contract. part 1. completed all elements of contract. Al-Motawal in interpreting Civil Law . (Deep Study of Western and Islamic jurisprudence) part 1. completed all elements of contract, Zane law publications. Beirut 2013.
2. Mahmoud Hasan al-Sahli, contractual relationship between Developer and Buyer. comparative Study to sale contract on map, study published in the law journal for and economic and law research, article 2, folder 1, No 1,2021.
<http://manifest.univ-Ouargla.dz>
3. Dr. Osama Ahmed Bard', to complete contract, analytical study in Egyptian and French law, Dar Al-Jamia 2011.
4. Judi Mustafa Mohammed, estate developer commitment, in the sale contract on map , master's thesis 2020.

5. Dr. Hammed Shakir Mahmoud al-Tae, pre- Negotiation to contract ; Law publication 2015.
6. Duwa Asia , Contract of Keeping right, Estate Developing Session 2012, College of law and Scientific Sceince, Saad Dahlab University, Al-Balada 2019, available electronically according to the link:
7. Dr. Sulaiman Marqus, Al-Wafi on Civil law in Commitments, volume 1 contract theory , Singular volition, p 4 Al-Salaam press 1978.
8. Dr. Tariq Kazem Ajeel, Iraqi investments law Interpretation , al-Sanhour Library, Bagdad 2009.
9. Dr. Abdul Razak Ahmed al-Sanhouri, Wasit on civil law interpretation. Part 7, Volume 1, Dar Al-Nahda Al-Arabiya , Cairo 1946 p. 77.
10. Dr-Mohammed al-Marsi Zahra, Sale buildings under construction, comparative study in Egyptian, Kuwait, and French law Kuwait University, Kuwait 1989.

Second: laws

1. Law Emirate Ajman number (2) year 2020 regarding Estate Development organization .
2. (R31-261) of decision 31 in year 1978. French.
3. See. material (L1-271) French Building and housing Act of 31 June 1978, amended by law number 990-2015 act on 6 August 2015
4. Law (11-4) dated on 17\2\2011 Algerian law , concerning the rules to develop the activity the real estate. Published on the official newspaper. No 44.

Third: foreign source

1. Olivier Tournafond ,vente d' immeubles a construire ,DALLOZ ,2004.

See: Gregory cauvin ,la volonté deborder par la morale.l' exemple de la vente d' immeubles ,these pour le doctorate en droit ,Arrêté du 7 auot ,2006 .256 .article Electronic copy available at : <https://theses.hal.science>.



© Copyright of Journal of Strategic Research in Social Science (JoSReSS) is the property of SRA (Science Research Associates) Strategic Research Academy & Academic Publishing® and its content may not be copied or emailed to multiple sites or posted to a listserv without the copyright holder's express written permission. However, users may print, download, or email articles for individual use.