

Buyer Guarantees at the Stage of Concluding a Contract for the Sale of Real Estate Under Construction

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Abstract

If the contract for the sale of real estate under construction was intended to economically address the need of individuals for housing, the aforementioned contract failed to achieve the desired goal as a result of the emergence of many real estate investors who tried to exploit the need of individuals for housing in light of this housing crisis. We often hear about the failure to complete many residential complexes or the sale of the residential unit to more than one buyer or the seller escaping with the money of the bookers, so the buyers find themselves without effective protection. Therefore, the above risks have highlighted the need to include many guarantees that ensure the protection of the buyer in the contract for the sale of real estate under construction, thus ensuring that those who purchase residential units under construction are protected from exploitation and greed of investors. It is worth noting that the contract for the sale of real estate under construction stipulates a set of guarantees that ensure the buyer that the seller will fulfill his contractual obligations. The buyer in the contract for the sale of real estate under construction is exposed to the risk of the seller not completing the project. This risk does not exist in the normal sale, as it applies to a property that exists at the time of contracting. Therefore, we find that the laws regulating this contract have stipulated a set of guarantees that aim to provide adequate protection for the buyer, and that some of these guarantees do not go beyond the guarantees stipulated in the normal contract for sale, and some are new guarantees specific to the contract of sale of real estate under construction.

Keywords: *Contract for the Sale of Real Estate, Sale of Real Estate, Buyer Guarantee.*

Introduction

The purpose that the buyer seeks to obtain by contracting in a contract for the sale of real estate under construction is to obtain the property to be constructed. Usually, the buyer does not accept the contract without the seller providing what guarantees the implementation of the contract, especially since this contract relates to something future (not present at the time of contracting). Also, under this type of contract, the buyer pays part of the price before the completion of the property (the subject of the contract), and pays the rest of the price in stages, so the project is usually financed through the installments paid to the seller. Accordingly, and for the above, the contract must be characterized by guarantees that are sufficient to protect the buyer in all stages of the contract, so that these guarantees are not limited to the previous stage, but extend to the stage of concluding the contract. This protection is represented in a set of procedural and financial guarantees.

Importance Of the Study

The importance of this study is that it examines the guarantees that provide the buyer with the necessary protection in the contract for the sale of real estate under construction. Despite the prevalence of dealing with the aforementioned contract, we do not deny the existence of a large number of people who refrain from dealing with such a contract despite the great importance of the advantages and facilities it provides. Among the reasons for this reluctance is the weakness and fragility of the legal organization or the absence of this organization in some countries for this contract and the lack of sufficient guarantees to protect the rights of the buyer. This type of contract that is becoming widespread (the contract for the sale of real estate under construction) requires the enactment of legislation that provides the necessary guarantees that guarantee the buyer obtaining the fruits and benefits of the contract, as the buyer seeks, as a result of his

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contract, to obtain a property with a certain quality and specifications once the agreed-upon period of time has ended.

Study Objectives

This study aims to shed light on the guarantees that ensure the seller's implementation of the obligations incurred in the contract of sale of the property under construction. These guarantees, in turn, contribute to creating a sound environment for contracting on such properties, as they will be the best incentive and encouragement for individuals to enter this field, as well as urging the honorable Iraqi legislator to codify a legal organization that ensures the provision of the necessary guarantees to the buyer, as providing these guarantees leads to creating a kind of reassurance and transparency in the buyer's soul.

Problem of the Study

The problem of the study revolves around the question of the most prominent means of protection and guarantees available to the buyer of a property under construction, given the special nature of this contract, as it relates to a place that does not exist at the time of concluding the contract, such that the buyer accepts to contract based on designs and plans only. Does practicing the activity of selling a property under construction require obtaining specific licenses from specific administrative authorities? Or can anyone practice this real estate activity?

Study Methodology

In this study, we adopted the comparative analytical approach, where the legal texts will be addressed, then discussed, understood, analyzed and applied to the various aspects of the research. This will be done in light of comparing the texts of Iraqi law with other laws, especially the French law on the sale of real estate under construction, as it is the oldest comparative law regulating this contract, as it embraced this type of contract and set its own provisions for it, in order to learn about the experience of French law in this field and the provisions it contained, and also to compare it with the Emirati and Lebanese law.

Study Plan

- The first requirement: procedural guarantees.
- First section: Obtaining administrative licenses.
- The second section: Announcing the housing project.
- The third section: The obligation to inform the buyer.
- Fourth section: Laying the foundations and the ability to finance the project.
- The second requirement: financial guarantees.
- First section: Opening a bank credit.
- The second section: joint and several guarantee.

The First Requirement

Procedural Guarantees

In order to ensure the completion of the construction process, it was necessary to surround this process with a set of procedural guarantees that are considered means of protecting the buyer in the contract for the sale of the property under construction. These guarantees are represented in issuing the necessary licenses from the relevant authorities, advertising the project, the seller's commitment to inform the buyer, laying the foundations in the project, and the seller's ability to finance the project at a rate of 75% of the total expected price. We will discuss each of these guarantees in a separate section, as follows:

The First Branch

Obtaining Administrative Licenses

Administrative license means “the permission granted to individuals by the competent authority in the country to allow them to practice a specific activity (in the scope of our research, the permission to practice the activity of selling real estate under construction)”).

Note that the licenses that must be obtained by the person wishing to engage in the activity of selling real estate under construction are represented by two types of licenses, as explained in the items below:

First: The administrative license to build the property subject to the contract for the sale of the property under construction:

The process of building a property must be on an area of land on which the seller has the right to build. However, the construction process on this land may be interrupted by some obstacles, even if the seller has the right to build on it. These obstacles may lead to the removal of the building by demolition, or lead to the buyer losing money by paying sums of money in vain, such as building on lands located within oil explorations, or building outside the urban design of cities, or building under electrical transmission lines, or making the building something that leads to the buyer losing his property. In light of these obstacles that may arise, it was necessary to establish a mechanism to monitor the demarcation of the land boundaries, and the conformity of the building to the technical specifications, in order to avoid errors that would lead to the demolition of the building. This mechanism is represented by the building permit.), which is considered one of the buyer’s guarantees in the contract of sale of the property under construction, as the seller obtaining a building permit from the legally specified authorities prevents the buyer from falling into the above problems and makes him feel assured that he will obtain the residential unit he seeks to obtain, as the seller is building on land on which he has the right to build, and thus the benefit of the buyer concluding this contract will be achieved, which is obtaining housing.

The procedures for granting a building permit are summarized in submitting an application to the authority responsible for granting this permit. Mostly, the mayors are the ones who grant these permits if the property to be built is located within the municipal boundaries. However, if the property is to be built outside the municipal boundaries, the building permit is given by the governors or district governors.)The competent authority, after studying the application submitted by the interested party, as to whether it meets the conditions or not, may accept the application and grant the building permit or reject the application. These conditions include:

- The submitted application must have met the required formal conditions and the substantive conditions regarding the conformity of the applicable constructions with the principles and rules of construction.
- Designs and plans should not be outside the established building codes and planning regulations.
- Taking into account public safety and security in construction).

Referring to Article (63) of the Municipalities Administration Law No. (165) of 1964, we find that the Iraqi legislator has stipulated obtaining a permit from the municipality before undertaking any construction.)Accordingly, the municipality is the only administrative body in Iraq authorized to issue a building permit according to certain conditions, including the location and area of the property. If the property to be built is located within densely populated areas, there will be special conditions that form the basis for granting

building permits in those areas. Recently, the municipality has required the builder to preserve the environment surrounding the building.

The UAE legislator has obligated the main or sub-developer to meet the following conditions before starting to implement the project or sell its units:

- Receiving the land and obtaining a certificate of its marks.
- To have actual control over the land on which the project will be built.
- Obtaining the necessary approvals from the competent authorities before starting the project implementation .

Thus, the UAE legislator has obliged the real estate developer to obtain a license from the competent authorities before starting construction.

The Lebanese legislator has also stipulated obtaining a prior license before constructing buildings. Anyone wishing to construct, convert or renovate a property must submit a request to the competent administrative authority, which in turn grants the building license in accordance with the applicable texts. Since the contract for the sale of a property under construction has not been regulated in the Lebanese Republic by a special law, it is therefore subject to the general rules that regulate the issue of a building permit.

Thus, it becomes clear to us that all the legislations under comparison have required the seller to obtain a building permit before starting to construct the property, and this in turn constitutes an important guarantee of this contract that is in the interest of the buyer, as the condition of obtaining administrative licenses from the competent authorities is considered one of the most important guarantees of the buyer in the contract for the sale of the property under construction, as it instills confidence and reassurance in the latter, as he is dealing with a person licensed by the public authority to practice this activity, and thus he avoids many problems that he may be exposed to in the future.

Second: The administrative license for the seller to practice the activity of selling real estate under construction:

No person, “natural or legal,” can practice the activity of selling real estate under construction before obtaining the necessary licenses from the relevant authorities. The practice of the above activity is limited to the person whom the administrative authority responsible for issuing licenses deems qualified to practice this activity. The real estate investor does not obtain a license from the administrative authority unless he has the financial and technical capacity to complete the real estate project with the necessary conditions.)Recently, we have seen an increase in the number of real estate companies and offices working in the field of selling real estate under construction. To protect the buyer from fictitious companies that work to defraud individuals by taking money without constructing a building, it was necessary to establish an administrative procedure that guarantees the buyer dealing with a party that has a license to practice the activity of building and selling real estate. This procedure is represented by the administrative license imposed by the public authority on those who wish to practice this activity in order to avoid fraud and deception of individuals. Therefore, this procedure is a preventive measure taken by the public authority, as the competent administrative authorities can take the necessary precautions to protect society from the potential harmful effects of practicing certain activities if they were without supervision from the competent administrative authorities.)This instills confidence and reassurance in the buyer when contracting for such a contract. Thus, this procedure constitutes a guarantee for the buyer, as he is dealing with an administratively reliable entity, which removes doubts in the buyer’s mind that the seller will not implement the contract.

For all of the above, we find that some legislations ()The law that dealt with the sale contract of real estate under construction has given the real estate investor increasing attention that is consistent with the importance of the legal position that he constitutes as the first and most important party in the process of selling real estate under construction. This importance stems from the centrality of the role that the real estate investor occupies and in view of the importance of the sale contract of real estate under construction and what it enjoys in terms of privacy and creditworthiness.)These laws have restricted the practice of selling real estate under construction to some persons and not others. The aforementioned sale is not considered a mere contract between two parties and therefore its effect is limited to them only. Rather, it is a process related to hundreds of residential and commercial units, hundreds of concluded contracts, and huge sums of money deposited or delivered, in addition to its connection to the state's plans in the field of economic development.).

The Second Branch

Residential Project Announcement

Advertising is defined as “a paid, non-personal communication activity carried out by a known party to a large audience with the aim of attracting its attention, exciting it, persuading it, and urging it to purchase goods and services or to positively accept the advertised establishments, people, or ideas.”).

It is worth noting that commercial advertising has now become one of the most important means that the merchant resorts to in order to introduce the public to his goods, to achieve an increase in demand for the offer, and to encourage them to contract. Therefore, we find that commercial advertisements have begun to play a decisive role in economic life, and the same applies to the contract for the sale of real estate under construction. The real estate investor has begun to use all means of advertising to inform the buyer of the features of the real estate unit that he intends to build in the future and to encourage him to buy. This is what we notice today on television and on social media, especially after the increasing demand of people to buy this type of residential units.).

It is noted that the Iraqi legislator did not address commercial advertising in a separate special law, and even by referring to the Consumer Protection Law No. (1) of 2010, we find the Iraqi legislator's lack of interest in the issue of false advertisements that mislead the consumer to the point of neglect, despite the fact that Article (2) of the aforementioned law states that “this law aims to: 3- Prevent any act that violates the import, production or marketing of goods... or leads to misleading the consumer,” which means that the basic wisdom of enacting this law is to guarantee the rights of the consumer and protect them against any violations or illegal practices or marketing pressures or attempts at persuasion practiced by sellers whose goal is to harm the consumer in various ways or mislead him regarding information about the advertised goods or service.)But all this is on the theoretical level. As for the executive level, there is currently no institution that specializes directly in the subject of advertising control.

We conclude from the above thatThe Iraqi legislator did not regulate advertising in the field of selling real estate under construction.Although it is important to organize the advertisement of residential units under construction due to the seriousness of this issue, as it does not concern an existing property, but a property that can exist, the seller often promotes a fictitious project with the aim of collecting huge and quick profits, exploiting the buyer's need to obtain housing, especially in light of the housing crisis that Iraq is currently going through, we see that it is better for investment bodies in the governorates that are not organized in a region to follow the example of the Investment Authority in Diwaniyah Governorate, as it stipulated in the regulatory regulations for marketing residential units that the investor must do the following: “1- Promote and introduce the investment project by advertising it in the media after the approval of the Authority regarding it...”, and accordingly, the Investment Authority of Diwaniyah Governorate has obligated the investor to advertise the project, so it is a matter that is incumbent upon the investor and not a choice left to his will, and the investor must obtain the approval of the Authority before proceeding with advertising the residential project.

The French legislator did not regulate how to advertise the sale of residential units under construction in particular, but it is noted that Special Law No. (27) of 1973 considered an advertisement that does not conform to reality (false or misleading advertisement) a crime and is subject to the French Penal Code.).

As for the position of the UAE legislator in the Emirate of Dubai, as usual, he did not leave the matter without regulation, as he emphasized these advertisements and indicated the method of working with them. He stipulated that the real estate developer, before starting to advertise the project, Obtaining a license from the competent authorities Article (5) of the Real Estate Development Account Law in the Emirate of Dubai stipulates that “the developer may not advertise in local or foreign media or participate in local or foreign exhibitions to promote the sale of units or properties on the map except after obtaining a written permit from the Department. The Director General shall issue the necessary decisions to regulate the conditions for advertising in the media and participation in exhibitions.”

In Lebanon, the legislator did not address the issue of advertising residential units under construction in an independent law. Therefore, the issue is subject to the provisions of the general rules in the Lebanese Consumer Protection Law No. (659) of 2005, which prohibited the use of deception and misleading the buyer and imposed a criminal penalty and a fine, or one of these two penalties, on the misleading advertiser.)Lebanese jurisprudence sees that)Although deceptive advertising is addressed in the Consumer Protection Law, this is not sufficient to protect the buyer in a contract to sell a property under construction from deception in the advertisements that the project owner often uses to attract the buyer, after which the latter finds himself in front of an apartment whose specifications differ from the specifications of the apartment advertised.

It is clear from the above that the laws under comparison did not give the subject of the investor’s announcement of the residential project he intends to establish the necessary importance and care, with the exception of the UAE legislator, who organized this subject in a comprehensive manner and addressed most of its aspects, whether in terms of the entity responsible for issuing the conditions necessary for announcing the project or in terms of the time at which the developer begins promoting the sale of units or properties on the map.

There is no doubt that the field of the contract for the sale of real estate under construction is one of the most important fields in which the satisfaction of the public (advertisers) depends on the information contained in these advertisements, since the contract in question relates to a property that does not exist at the time of concluding the contract but is likely to exist in the future. When the buyer comes to contract with the investor to purchase the residential unit subject to the contract, he relies on knowing the specifications of this unit on the data and information provided by the seller in the illustrated advertisement. Therefore, the advertisement plays an important role in the field of selling real estate under construction. Accordingly, the issue of advertising the residential project should be regulated and this advertisement should be made the responsibility of a government agency to protect the buyer, as the advertisement is considered one of the important guarantees that ensure that the buyer obtains the residential unit with the same required specifications on the basis of which he contracted with the seller. For each of the above, the advertiser must indicate when announcing the sale of real estate under construction (residential units) the location and area of the land on which the building will be constructed, the overall description of the property, and a description of the residential unit with all its details, including area and number of rooms it contains, and the materials used in construction, in order to achieve the desired protection from the advertisement for the contractor who reserves the residential unit that is still under construction.

The Third Branch

Obligation To Inform the Buyer

At the beginning of the discussion about the seller’s obligation to inform the buyer, we must point out that this obligation has several names, including the obligation to inform, the obligation to advise, the obligation to warn, the obligation to inform, the obligation to disclose, and the obligation to disclose data. However, calling it the obligation to inform is the broadest in scope.

We are with the opinion that supports calling it by this name, since this name is the most comprehensive in meaning, as the applications of this commitment include the meaning of information at times and advice at other times, and its applications also include the meaning of warning, as the goal of this commitment is for the person to contract with insight and foresight that makes his consent free and enlightened, and makes the contract based on more legitimate trust between people.).

The fact of the matter is that jurisprudence differentiates in this area between the obligation to provide insight in the stage prior to contracting, and the obligation itself in the contracting stage. Some contracts require the obligation to provide ongoing insight so that the buyer has sufficient knowledge and awareness before entering into the contract until the contract is executed and received.).

The obligation to provide information in the pre-contractual stage has been defined as “an obligation covering the preceding stage relating to the obligation of one party to provide the necessary information to the other contracting party when concluding the contract, in order to create complete and sound satisfaction with all the details of the contract.”)The obligation to provide information during the contract implementation stage has been defined as “the seller’s obligation to provide data and information to the buyer in a manner consistent with the requirements of good faith in dealing, which would constitute free and informed consent.”)There are those who combined the two parts of the obligation to provide information in one definition and defined it as “an obligation that falls on the party opposite the consumer in the stage before concluding the contract and in the stage of its formation or conclusion and continues even after concluding the contract.”).

We conclude from the above that the obligation to provide information falls on the debtor in the stage before concluding the contract, and extends until the implementation stage.

In the context of a contract for the sale of a property under construction, the obligation to provide information is based on the lack of equality and balance between the two parties to the contract.)In other words, one party to the contract has information that the other party is unaware of, as the seller in the contract under discussion is a real estate investor who is supposed to have a great deal of experience and competence and therefore be proficient in the field of real estate construction and understand all the details and particulars of the project. As for the buyer, he is often one of the general public who is unaware of the aspects of the contract or lacks experience in the field of construction. Accordingly, the contract for the sale of real estate under construction is considered one of the contracts in which there is an imbalance in the specialized technical knowledge between the contracting parties, which imposes an obligation on the professional party in the contract (the seller) to disclose all information and data to the other party due to his scientific and practical experience regarding the construction work to be carried out.

As for French law, it did not neglect the importance of this guarantee (informing the buyer of all data and information related to the aspects of the contract) to avoid disputes that may occur in the future between the two parties to the contract for the sale of a property under construction. Therefore, it obligated the seller in Article (11_261) of the French Building and Housing Code to include in the contract a set of mandatory data that ensures the buyer’s sufficient knowledge of the sale, as it stated in the aforementioned article: “The contract must be concluded by virtue of an official document and it must state:

Description of the building or section being sold.

Its price and methods of paying it.

Delivery time.

Guaranteeing the completion of the building or returning the payments made in the event of the contract being cancelled due to the non-completion of the building, when the contract takes the form stipulated in Article (3_1601) of the Civil Code. The contract must also indicate whether the price is subject to review or not, and in the event of an affirmative, the methods of this review shall be indicated.

In addition, the contract must include useful information regarding the contents of the building and its technical features in its appendices or in the documents deposited with the notary public. The joint ownership system must also be delivered to the buyer and he must be informed of it in advance.

If the seller is able, before concluding the sales contract, to obtain a special loan from the French Real Estate Credit Bank or from the Contractors Bank, the contract must state that the buyer was aware of the conditions set by the decree under which the loan was granted to the seller, and that failure to comply with the provisions of this article leads to the invalidity of the contract, and this invalidity can only be invoked by the buyer, provided that this is done before the completion of the works.”

Some have said that)The reason for the obligation to write a contract for the sale of a property under construction and include the above-mentioned data is the desire of the French legislator to fulfill the real estate investor’s obligation to inform the buyer, as the failure to include that data leaves the seller’s fulfillment of this obligation as an assumed matter. Therefore, the legislator wanted that assumption to be a reality through the text of Article (11_261).

It is worth noting that the French judiciary did not stop at the limits of the above-mentioned text, but rather expanded the scope of the obligation to provide information, and considered the negative position taken by the seller in the contract for the sale of real estate under construction, represented by silence or failure to disclose important information to the other party, a breach of a primary obligation in the contract for the sale of real estate under construction, which is the obligation to provide information.

In this context, the Court of Appeal issued(Touloz)Its decision to hold the real estate investor responsible for his concealment and failure to disclose the presence of a rainwater drain in the Lautrec Avenue networkLautrecLocated next to the residential unit that the couple (x) to purchase it, despite the fact that he was informed of this by the government authorities and his attention was drawn to the damages resulting from the presence of this drain next to the residential units (such as odors and floods). The court based its ruling on the fact that this was nothing but a cover-up with the aim of deception.).

Regarding the position of Iraqi law on the obligation to provide information, and although this obligation has not been directly referred to in any independent legal text, the legal basis for the obligation under discussion can be extracted from legal texts scattered among several laws. In civil law, we can find a legal basis for this obligation in the principle of good faith and honesty that must prevail in transactions in general. Article (150) of the Civil Code states: “1_ The contract must be implemented in accordance with what it contains and in a manner consistent with what good faith requires. 2_ The contract is not limited to obligating the contracting party to what is stated therein, but also includes what is required of it according to the law, custom and justice according to the nature of the obligation.”

When concluding any contract, it has binding force in terms of implementation, and this implementation must be in good faith, and this is considered a contractual obligation that may result in contractual liability as a penalty for breaching it. Therefore, it is necessary to take this principle into account in all stages of the contract, whether in the stage of its formation or its implementation, to exclude bad faith on the part of the contracting parties.).

The legislator in the Iraqi Consumer Protection Law has stipulated in the first paragraph of Article Six in the third chapter thereof under the title of Consumer Rights a set of guarantees and information that the consumer has the right to obtain, and in the second paragraph of the same article it has stipulated the consumer’s option to return the goods in whole or in part to the supplier and to claim compensation for the damage that befalls him or his money in the event that he does not obtain the information stipulated in this article.

In the context of the UAE law, we find that the legislator in the Emirate of Dubai has required the real estate developer to prepare a model contract for the future sale of real estate on the map and consider it one of the documents that must be attached to his application related to obtaining a license to practice the profession of selling units on the map, as Article (6) of the Real Estate Development Account stipulates

that “the real estate developer wishing to sell units on the map must submit an application to the department ... attached to the following documents: ... 8_ Model contract for sale between the developer and the buyer.”

The purpose of the obligation to prepare a model contract for the sale of units on the map and submit it to the competent department for approval or not is to ensure that the real estate developer fulfills his obligation to inform the buyer. The developer’s fulfillment of this guarantee is achieved by including in the contract model all that relates to the property from detailed descriptions and technical specifications. Preparing the contract model and including in it the essential data related to the property to be constructed gives the buyer a clear picture of the path he wishes to take, and thus his will is enlightened and free from any defect within the scope of the obligation to inform.

In Lebanese law, the obligation to provide information is based primarily on the principle of good faith, and this is what Article (221) of the Law of Obligations and Contracts confirms, as it states that “contracts established in a legal manner are binding on the contracting parties, and must be understood, interpreted and implemented in accordance with good faith, fairness and custom.”

We also find the legal basis for the obligation to provide information in the text of Article (4) of the Consumer Protection Law in its third chapter under the title (Informing the Consumer), which states: “The professional must provide the consumer with correct, comprehensive and clear information, covering the basic data of the commodity or service, methods of using it, the price, the terms and procedures of the contract, and the risks resulting from use.”

There is no escape from saying that the general rules of contract require each party to investigate the circumstances of the contract on his own, on the basis that he is the most keen person to protect his rights and take care of his interests. As for informing the other contracting party and providing him with the adequate and necessary information regarding the circumstances of the contract and the aspects of the matter being contracted upon, this is basically a moral duty, but it later crystallized in the form of a legal obligation, as we explained above.

The Fourth Branch

Laying The Foundations and Being Able to Finance the Project

Concluding the contract after completing the foundations necessary for construction and ensuring the seller’s ability to finance the project at a rate of no less than 75% of the total expected price is considered one of the buyer’s guarantees in the contract for the sale of the property under construction.

Within the scope of the seller’s obligation to lay the foundations, we see that the legal jurisprudence that addressed the contract for the sale of real estate under construction has gone in two directions. The first direction ()He believes that it is preferable for the legislator to stipulate that a contract for the sale of a property under construction should not be concluded until after the foundations have been laid, to ensure the seriousness of the seller on the one hand and to protect the buyer from unpleasant surprises on the other hand, since the buyer - before laying the foundations - contracts for something unknown, and in this case the purchase is an adventure with uncertain consequences.

As for the second trend ()He went on to say that the text prohibiting the investor from contracting until reaching a specific stage of completion of the property will cause harm to the investor, as the legislator’s task is to find that contractual balance in the interests of the two parties to the contract without exaggerating in protecting one party at the expense of the other party. The statement here that this prohibition from contracting until reaching a certain percentage of completion is in the interest of the buyer, in return, creates injustice to the rights of the other party, which is the investor, considering that granting the investor the right to conclude a contract to sell the property under construction before starting work will give him reassurance of the success of his project and the achievement of its economic feasibility, especially when all or most of the residential units in his project are sold before starting construction, and thus will give him an incentive to expedite the completion of the project.

Regarding the position of Iraqi and Lebanese law, on ensuring the foundations are laid and the ability to finance the project, and due to the absence of legislative regulation for the contract of sale of real estate under construction, the practical reality is that the buyer contracts with the investor to purchase a residential unit within the residential project without taking into consideration the stages of completion of the project and the financial capabilities of the investor and whether he can finance the project up to 75% or not, so that the buyer often contracts and pays the down payment and may reach the point of paying several installments of the price and the investor has not originally started building the project, so the buyer continues to pay the installments without the project having reached a stage of completion that is commensurate with what is being paid, and all of this is due to the weak legal awareness of the buyer who wants to obtain housing by any means, which makes him vulnerable to deception by the investor who seeks to profit by exploiting the buyer's negligence and ignorance.

In this regard, we see that the French legislator in Article (7) of Law (1967) on the contract for the sale of real estate under construction decided that it is not permissible to conclude the contract before laying the foundations of the building, and the goal sought by the legislator is to protect the buyer against any surprises that may arise during the construction of the project, but the legislator cancelled this condition under Article (44) of Law (1971) amending Law (1967), and the reason for changing the legislator's position on the condition of concluding the contract after the foundations are completely laid is the criticism of French jurisprudence.)This restriction is due to the lack of justification for this condition, especially since the legislator has established sufficient rules in the legislation regulating this sale that can protect the buyer and guarantee his right.

As for the seller's ability to finance the project, meaning that the seller has sufficient financing that gives the impression that the property will be completed, Article (b_12) From the executive decision of Law (1967) the financing percentage, the investor (seller) must secure financing for the residential project he intends to establish at a rate of 75% of the expected price of the entire project, or 60% if the seller is able to finance the project at a rate of 30% from his own funds.

It is said that the justification for determining the seller's ability to finance the project at 75% is that the legislator considered that the seller would take into account in his calculations When determining the total price of the project A percentage of profit of not less than 25%, and therefore 75% of this total price is equivalent to 100% of the project cost price as long as the 25% is allocated as a profit above 75%.).

Article (18_261) of the French Building and Housing Code has specified the sources of financing from which the seller must finance his project, at least one of them, in the percentage specified above. These sources are:

First: The Seller's Own Funds:

These are the funds provided by the seller personally from his own funds and in a final and irrevocable manner. If the seller provides from these funds an amount equivalent to 30% of the total price of the project, this will lead to a reduction in the guarantee from 75% to 60%.).

It follows from this definition that several conditions must be met:)In this source, they are:

This money must be personal, meaning that it belongs to the seller, such as the seller's own money. However, money that he receives as a loan from a friend, for example, is not considered personal money.

These funds must be provided to invest in the construction project. Personal funds that the seller keeps in a bank, for example, without providing them to help in the construction project, are not included in this source.

These funds must have been provided by the seller to be invested in the construction project in a final and irrevocable manner, such that he cannot withdraw them to use them in another project. Thus, these funds

must have actually been invested in the construction project, such as purchasing land or placing these funds in a bank account designated for the purpose of financing the project, inevitably.

Finally, the seller can prove these personal funds by means of a declaration issued by the bank or any financial institution that practices real estate credit operations.).

Second: Approved Credits:

These credits include what the bank or financial institution that practices real estate credit operations grants by opening a credit or joint guarantee as a valid, approved guarantee that can be demanded for implementation by becoming final and irrevocable.)And that the seller obtaining an approved credit from a person other than those specified in Article (18_261) (the bank and financial institution that practices real estate credit operations) is not suitable for providing a self-guarantee for the completion of construction, and the approved credit is proven by a statement issued by the bank or financial institution that agreed to grant the credit.

Third: The Price of Contracts Already Concluded:

At first glance, it may seem that there is a conflict between considering the price of sales contracts that have already been concluded as one of the sources of financing the project, and invalidating every contract concluded before this guarantee is available. However, this conflict is removed by what Article (18_261) gave the seller in terms of a period after laying the foundations until he secures the necessary financing, which is (6 months) from the date of laying the foundations.)Thus, the seller can rely on the installments he takes in the contracts he concludes after laying the foundations until the end of the mentioned period, and then secure the financing with it at the rate specified by law before the end of the six months, and this financing is proven by means of the declaration of the contract notary who must be resorted to to document the contract, otherwise it is void.

Finally, we find that Article (20_261) of the Building and Housing Law stipulates that it must be stated in the contract of sale of the property under construction that the buyer has been informed of the content of this guarantee. This article also obliges the seller to place at the buyer's disposal the acknowledgment supporting the issuance of financing from its source, which is the acknowledgment of the notary of the contracts with regard to financing from the price of contracts already concluded, or the acknowledgment of the bank or financial institution of the approved credits or its acknowledgment of the seller's own funds.

As for the Emirati law, the real estate developer is not allowed to open the door to contracting with those wishing to buy until he has actual control over the land on which the project will be built. This is explained by the fact that the seller cannot contract until he proves that he has actual control over the land, and this is achieved by starting to lay the foundations.

As for project financing, the law regulating off-plan sales in force in the Emirate of Dubai requires the real estate developer to own 100% of the land ownership value before starting the sale, in addition to opening an escrow account and depositing 20% of the project value in it.

The Second Requirement

Financial Guarantees

The financial guarantees in the contract for the sale of real estate under construction are provided as a guarantee to the buyer by parties that are not a party to the contract for the sale of real estate under construction, and are financially committed to financing the construction operations. These parties have been identified under Article (22) of the Executive Decree of the French Law (1967) regulating the contract for the sale of buildings under construction, and they are either a bank or a financial institution that practices real estate financing operations, and these guarantees usually provide sufficient insurance to the buyer to

complete the construction work, and there are two forms of financial guarantee, we will discuss one of these forms in each branch, as follows:

The First Branch

Opening A Bank Letter of Credit

Resorting to opening a bank credit can constitute a guarantee for the buyer in completing the property to be constructed. Opening a bank credit is considered one of the external guarantees in the contract for the sale of a property under construction, and the credit is usually issued by a bank or financial institution that practices real estate financing activities.

A bank credit is defined as “a contract whereby the bank places at the disposal of the beneficiary a sum of money for a specific or indefinite period.”).

Based on this definition, the seller can agree with a bank or any other financial institution to open a credit in his favor, and whoever agrees to open the credit is obligated under the contract to pay the seller or on his behalf the amounts necessary to finance the project and complete the construction.

The financial commitment is guaranteed by payment in the event of inability to finance the project. It must be noted that the financial guarantee does not only cover the completion of the construction project in the event of the seller's inability to complete it, but also extends to the guarantor's commitment to complete the financing of repairing construction defects. This guarantee covers all the amounts necessary to finance the construction process, excluding additional expenses such as the penalty for delay in delivering the property. Thus, the buyer achieves a definite guarantee under this commitment.).

The process of opening a credit goes through two basic stages, which are:

Stage one: It consists of concluding a credit contract, whereby the bank and its client (the seller) agree to open a credit for the benefit of the beneficiary (the buyer), according to certain conditions and for a specific period. The client obtains the bank's approval after the latter studies the request submitted by the client and conducts the necessary inquiries to verify the client's financial position, good conduct and commercial reputation. After that, the client obtains sufficient guarantees.

Stage Two: It is represented by the bank issuing a definitive letter of credit directed to the beneficiary (buyer). Under this letter of credit, the bank undertakes to pay a specific amount, which is the value of the letter of credit.

Due to the absence of legislative regulation for the contract of sale of real estate under construction in Iraq, we resort to the position of the general rules regarding this guarantee. We note that there is no obstacle preventing the seller from agreeing with a bank to open a credit in favor of the buyer.

Due to the high demand of citizens to contract to buy residential units under construction, dealing with this type of sale has recently spread noticeably in Iraq. Therefore, the National Investment Commission has directed investment commissions in the governorates to restrict real estate investors and oblige them to provide bank financial guarantees before investors receive any installment of the price of the units under construction.).

As for the position of French law, the legislator defined in Article (17_201) of the Construction and Housing Law the opening of a bank credit as “the commitment of a bank or any other financial institution specified by law to finance the construction of the sold property in the event that the real estate investor is unable to do so.”

The legislator stipulated in Article (21_261) of the Building and Housing Law, in order for this guarantee to be available, that the letter of credit opening contract stipulates the right of the buyer or his successor in

the contract for the sale of the property under construction to demand the implementation of the letter of credit. It is a binding condition, the benefit of which appears in granting the buyer the right to demand that the bank put the letter of credit into effect, and he would not have that right without this condition because he is not a party to the letter of credit opening contract.

But what is the solution if the letter of credit contract does not stipulate this right for the buyer? Does the buyer still have the right to demand that the third party guarantor (the bank) pay the amounts necessary to complete the construction operations?

The answer is either that we adhere to the literal meaning of the texts and refuse to give the buyer the right to confront the guarantor to pay the necessary amounts to complete the construction, but the contract will be void in this case due to the lack of the conditions of the guarantee stipulated by the legislator, or that the guarantor agrees to give the buyer such a right despite the absence of a text on it.).

On the other hand, do the seller's creditors have the right to demand the implementation of the credit even though they are not parties to it? This can be imagined if the seller uses a contractor to undertake the construction work. Does not the effectiveness of the guarantee affect the fact that he is not granted the right to demand the implementation of the credit when the seller delays in doing so? The indirect claim granted to him under the general rules, when the seller neglects to exercise his rights, is not sufficient to reassure the buyer about the regularity of the financing process.

From all of the above, it becomes clear to us that this condition set by the French legislator reduces the effectiveness of this guarantee, as the buyer may be exploited by the seller and deprived of this right in the guarantee contract in order to evade its implementation.

Except for this condition, the legal texts do not impose any other condition that must be included in the bank credit contract.

In the same context, the UAE legislator in the Emirate of Dubai defined the escrow account as: "The bank account of the real estate project in which the amounts collected from buyers of units sold off-plan or from project financiers are deposited for the purpose of managing these amounts in a manner that guarantees the rights of buyers and protects them from manipulation by real estate developers." ().

The financial guarantee mechanism was also determined in the Real Estate Development Guarantee Accounts Law, where the legislator stipulated in Article (6): "The developer wishing to sell units on the map must submit a request to the department to open a guarantee account, and the request must be attached to the following documents:

- Dubai Chamber of Commerce and Industry Membership Certificate.
- Commercial license.
- Certificate of ownership of the land to be developed.
- A copy of the contract concluded between the main developer and the sub-developer.
- Architectural designs and preliminary engineering plans approved by the competent authorities and the main developer.
- A financial statement estimating the project's costs and revenues, certified by a certified legal auditor.

- A commitment from the sub-developer to commence construction work on the project after obtaining the approval of the main developer to sell off-plan.
- Sample sales contract between developer and buyer.

After verifying that the conditions for the real estate development escrow account are met and all required documents and papers are provided, the following steps are initiated ():

The real estate developer submits a request to create a real estate escrow account to the Dubai Land Department.

The Land and Property Department issues a No Objection Letter, through which the developer can open an escrow account with one of the licensed banks in the Emirates.

Opening an escrow account in the name of the real estate project, provided that it is allocated for the purposes of establishing the project. It is also not permissible to seize the amounts deposited in it for the benefit of the developer's creditors.

The bank is informed of all the terms of the contract concluded between the seller and the buyer, which contributes to protecting the amounts paid in advance by the buyers.

The real estate development guarantee account shall be managed by the account custodian, provided that the latter is qualified and highly efficient.

It is noted that the objective that the UAE legislator seeks to achieve by organizing the escrow account is to control the real estate market in Dubai, and to organize the processes of establishing and constructing units sold off-plan for the purpose of guaranteeing the rights of buyers.

Article (13) of the Dubai Real Estate Development Escrow Account Law stipulates that "If the developer mortgages the project to obtain a loan from financing institutions or companies, these institutions and companies must deposit the loan amount in the escrow account to be disposed of in accordance with the provisions of this law."

We conclude from this article that the developer can mortgage real estate projects to obtain a loan from banks or legally approved financing companies, provided that the value of the mortgage is deposited in the project's escrow account, for the purpose of ensuring that the deposited amounts are disposed of in accordance with the law.

Article (16) of the same law states: "No sums of money may be transferred from the escrow account to any other accounts."

Thus, we can say that the Real Estate Development Escrow Account Law in the Emirate of Dubai is accurate enough to provide financial security and protect the rights of buyers from the manipulation and deception of developers. The escrow account also provides security to the buyer that his money will be safe and will only be used for the purposes of completing the residential project. As for the real estate developer, the escrow account guarantees him the availability of sufficient cash liquidity to complete the project, and thus a safe and attractive investment environment will be provided.

Based on Article (310) of the Lebanese Commercial Law No. (304) of 1942, we find the possibility of the seller opening a credit with a bank for the benefit of the buyer in a contract for the sale of a property under construction.

The Second Branch

Joint And Several Guarantees

The joint and several guarantees are considered the second form of financial guarantees in the contract of sale of a property under construction to ensure the completion of the construction of the property, after the contract of opening a bank letter of credit.

The credit granted by the bank for the construction project may be a joint guarantee, in which the bank enters as a guarantor for the seller, undertaking to fulfill a specific obligation owed by him in accordance with the general rules of civil law. There is nothing wrong with the bank or financial institution intervening as a joint guarantor for the seller, guaranteeing buyers payment of construction costs and financing the project when the seller is unable to do so.

The joint and several guarantees are defined within the scope of the contract for the sale of real estate under construction as “a contract in which the guarantor (bank or financial institution) specializing in these guarantees or warranties, undertakes, in the face of the buyer and in solidarity with the seller (builder), to pay the amounts necessary to complete the process of building the property.”).

One of the effects of joint and several guarantees is that it gives the buyer alone the right to demand that the guarantee be put into effect in the event that the seller fails to fulfil his obligation to complete the property subject to the contract. As for the seller, he cannot demand that the joint and several guarantees be implemented, meaning that the joint and several guarantees are an obligation against the buyer only.).

It is worth noting that the joint guarantee is more effective in achieving security and ensuring the completion of construction operations than the bank credit opening contract for several reasons, including:

The opening of a bank credit is limited to a specific amount, while the joint guarantee may not be limited to a specific amount, and thus the guarantor is obligated to pay all the necessary expenses to complete the construction operations, no matter how much they are, without fear of exceeding the prescribed limit, meaning that the guarantor guarantees the fulfillment of the debt represented by (paying the costs of the construction operations) with all his financial assets, and thus the joint guarantee achieves greater protection for the buyer than the protection provided by the guarantee of opening a credit, since the latter guarantees the fulfillment of his obligation in a specific amount only and not in his financial assets as a whole.).

It is consideredThe buyer is a party to the joint and several guarantee process, and therefore has the right to demand the implementation of the guarantee without the need to stipulateText onThis is in the contract.If the buyer wishes, he may ask the seller to complete the project, or if he wishes, he may ask the guarantor if it becomes clear to him that the seller is unable to finance and complete the project.UnlikeGuaranteed openingA bank credit which must include an express condition that the buyer has the right to demand that the guarantee be enforced..

Bank credit is often for a fixed term.)The buyer’s right to recourse against the guarantor lapses at the end of this period. However, the joint and several guarantee does not end until the construction work is completed and after the property becomes ready for delivery, i.e., when the seller’s obligation ends, since the guarantor’s obligation is subordinate to the seller’s obligation.

As for the position of both Iraqi and Lebanese law, neither law stipulates a joint guarantee within the scope of a contract for the sale of a property under construction, due to the absence of legislative regulation for this contract. With reference to the provisions of the general rules, there is nothing preventing the seller in practice from agreeing with a bank for the purpose of guaranteeing it jointly in its commitment to complete the construction work, and these banks pay the amounts necessary to complete the property in the event that the seller fails to do so.

In French law, Article (21_261) of the French Building and Housing Code defines joint and several guarantees as: “A contract by which the guarantor undertakes, in the face of the buyer and in solidarity with the seller, to pay the amounts necessary to complete the property.”

The French legislator also specified in Article (24_261) of the Building and Housing Law the time for the expiration of the joint guarantee, stating that the joint guarantee ends with the completion of the construction, and the completion of the construction is proven in accordance with the text of the aforementioned article, in two ways, either by a certificate from a specialized person, or by proving the completion of the construction by a specific person according to the conditions of Article (2_261) of the Building and Housing Law.

Within the scope of the UAE law, we find that despite the UAE legislator's comprehensive organization of the off-plan real estate sale contract, which covered most aspects of the contract and did not neglect to address any guarantee that achieves the protection of the buyer's interest in this contract, it did not stipulate the joint guarantee as a form of financial guarantee, perhaps out of a desire to be satisfied with the real estate development guarantee account, as practical reality in the UAE has clearly proven the success of this guarantee in providing the necessary protection for both parties to the off-plan real estate unit sale contract.

For all of the above, the second form of financial guarantee (joint guarantee) is considered, in our opinion, the best way to achieve the best protection for the buyer, as the buyer becomes, with this guarantee, in a safe position when he proceeds to conclude a contract to sell the property under construction, as he will be reassured that even in the event of the seller's bankruptcy and his inability to complete the property, the banks or financial institutions guaranteeing will replace the seller by paying the necessary amounts required to complete the property.

Conclusion

After completing the research on the subject of buyer guarantees at the stage of concluding a contract for the sale of a property under construction and studying and analyzing the aspects related to it, we arrived at a set of results and proposals, which can be summarized as follows:

Results

All comparative laws in this study agreed on the necessity of obtaining the necessary building permits before starting construction work to ensure the safety of these buildings and to protect the lives of their occupants.

Advertising residential projects constitutes a guarantee for the buyer in the contract of sale of the property under construction, so it is necessary for the advertisement to include all the essential information and data related to the contract.

One of the financial guarantees stipulated by both the French and Emirati legislators in the contract for the sale of a property under construction is the opening of a letter of credit in favor of the buyer. However, in Iraqi and Lebanese law, this guarantee can be stipulated within the terms of the contract.

Joint and several guarantees are one of the important guarantees that the seller provides to the buyer to ensure his peace of mind in the contract of sale of real estate under construction.

Suggestions

We suggest that the Iraqi legislator create the necessary texts that authorize the Real Estate Registration Department or special committees formed by it to undertake the function of supervising and monitoring real estate sales contracts under construction and related real estate projects, which contributes to strengthening the investment environment for the construction and building sector.

We suggest that the Iraqi legislator create the necessary texts that regulate advertising for real estate under construction, and establish controls that ensure that the buyer obtains essential information about the

property subject to the contract, while imposing penalties on those who violate this regulation, whether through misleading advertising or false propaganda.

We suggest that the Iraqi legislator adopt the experience of the Emirati legislator in the Emirate of Dubai with regard to the real estate project guarantee account, by creating the necessary texts to create bank accounts in which the installments paid by the buyer are deposited, so that the seller withdraws what is necessary from these installments for the purposes of financing the construction process only, provided that these accounts are subject to the control and supervision of the Real Estate Registration Department.

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