

Ask the experts

Every week, we invite you to have your property questions answered by an expert. This week, **Andrew Gibson*** tackles the task.



ANDREW GIBSON
associate, Bin Shabib & Associates

Q I purchased a property off-plan seven months ago and the development is now taking form. Due to personal financial problems, I can no longer meet my payment schedule. What options do I have?

A On the assumption that the payment schedule is set forth in a legally binding contract governed by the laws of Dubai, and the developer is free from default, any failure to adhere to the payment schedule could put you in breach of the contract thus exposing you to potential legal action.

The powers afforded to the developer in such circumstances currently depend on the date upon which the contract was entered into. If the contract was entered into prior to August 31, 2008, the relevant contractual provisions will apply.

If, however, the contract was executed on or after August 31, 2008, Article 11 of Law No 13 of 2008 will apply, which basically enables the developer to terminate the contract and retain up to 30% of payments made where the purchaser is in default.

Therefore, you may decide to attempt negotiation of the payment schedule with the developer to a form that is manageable for you. While the developer is under no obligation to enter into such negotiations, it might be willing to adopt a flexible approach with regard to the prevailing market conditions.

If negotiations are successful in this regard, it is crucial that the amended payment schedule is then promptly recorded in writing and annexed to the original contract.

Finally, it should also be noted that at the time of writing, Article 11 of Law No. 13 of 2008 is in the process of being amended in the form of Dubai Law No. 9 of 2009, which will take effect once it has been published in the official gazette.

The indication is that Article 11 (as amended) will apply to the



cancellations of all off-plan sales contracts irrespective of the date upon which the relevant contract was signed, and that the rights of the developer will depend upon the level of completion of the construction works.

Q Can you explain what the upcoming Strata Law regulations could mean for homeowners and how it might affect service fees?

A Law No. 27 of 2007 concerning ownership of jointly owned properties in the Emirate of Dubai (the Strata Law) established rights and obligations

Do you have a property question that needs answering? Mail freeholdweekly@alnismrmedia.com along with your contact details

pertaining to jointly-owned property in Dubai. The aim of the Strata Law and the forthcoming regulations made pursuant to it is to govern the management, operation and maintenance of all common areas within jointly owned property.

It is therefore anticipated that the regulations will provide homeowners with enhanced control over both the standard and cost of future maintenance.

The service charges will be decided by the Owners' Association (consisting of the unit owners), and where there are units that have yet to be sold, the developer will be the final decision maker.

It is stipulated that the Owners' Association must be a 'not for profit organisation,' so homeowners can expect to receive greater benefits in terms of value for money. **fw**

Ask the experts

Every week, we invite you to have your property questions answered by an expert. This week, **Andrew Gibson*** tackles the task.



Andrew Gibson,
associate, Bin Shabib
& Associates

Q I have been told that I should look at investing in a project that offers an escrow account. What is the advantage of this?

A The main advantage is that the escrow account must relate specifically to the project, therefore the purchaser's instalments can only be used for the construction of that project. Escrow Law (No 8 of 2007) also stipulates that developers who wish to sell off-plan must first be registered with the Dubai Land Department and obtain a written permit from them before being able to advertise or sell any of the units.

If the developer fails to comply with the provisions of this law, it risks a fine of not less than Dh100,000 and may in certain circumstances be removed from the register.

Q I purchased an off-plan apartment in Dubai through a major developer. The project will be completed by December. If I sell it before the handover, is it true that I could 30% of its value?

A At present, there is no law applicable within Dubai supporting this stance; therefore this is ultimately a commercial issue as opposed to being a legal one.

It is possible, however, that the developer has inserted a clause into the contract which effectively allows it to charge a commission in the event that the unit is sold prior to handover. In more general terms, it is often perceived that the value of units increase following handover to reflect the added value of the unit being available for immediate occupation.

However, this perception is by no means scientific; therefore expert valuation advice should be sought before making an assessment in this regard.



Q With the existence of the Escrow Law and other new regulations, do you think that Dubai offers a more comprehensive legal and regulatory framework in comparison to the other emirates?

A The new laws and regulations affecting Dubai's real estate sector undoubtedly serve to offer enhanced protection to all participants in the market. What is encouraging is that the construction sector has also been subject to a number of new regulations relating to issues such as on-site safety guidelines, the provision of mandatory health insurance, and the proposed green building regulations (in a drive to make building standards in the emirate more energy-efficient).

In regard to Dubai's rapid growth in real estate terms, the increased need for such regulations was understandable and necessary.

However, with new developments in other emirates now being released into the market, particularly in Abu Dhabi, the focus on Dubai could invariably shift over time, resulting in a more uniform approach throughout the UAE. [fw](#)

Do you have a property question that needs answering? Mail freeholdweekly@alnirmedia.com along with your contact details