

Gateley's Dubai branch was recently involved in a dispute between a private client and a Dubai property developer. The dispute revolved around the variance in the initial and actual size of a property that was bought off-plan, where the developer demanded payment for the increased size. The dispute was not unique, however, the regulation of such cases remained uncertain until now.

In order to resolve the repeating disputes the head of the Real Estate Regulatory Agency (RERA) made a statement that in relation to these cases saying, "...the developer is not allowed to ask for an increase and there will be no extra charges on the investors."

Below, we have set out the details of the case.

Background summary

The investor purchased an off plan property from a Dubai based property developer in a proposed apartment building in Jumeirah Village Circle. The investor had made all payments to the developer in accordance with the payment schedule of the sale & purchase agreement (SPA) and was anticipating the handover of his unit in the first half of this year.

The investor received the notice of handover together with an additional notice stating that the purchase price was being increased by more than 50%. The increase was requested by the developer due to a variation of more than 50% to the size of the property initially indicated in the SPA.

The Contractual Provision

The SPA signed by the investor and the developer contained a clause that provides for what happens in the event of an increase in size of the property as follows:

"If the floor area is increased by more than 3% the seller shall be entitled to increase the purchase price in accordance with the increase."

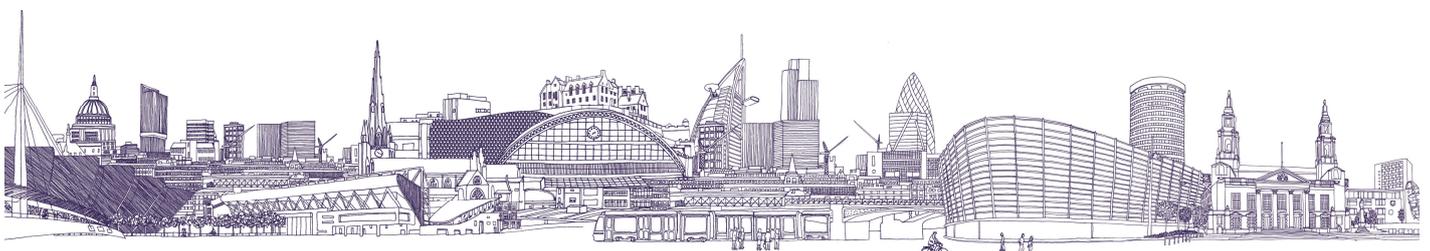
Based on the wording of the clause, there was clearly a contractual obligation for our client to pay the increase based on the SPA he signed with the developer. It should be noted that such clause is common in off-plan sales in Dubai.

The Relevant Law

The relevant provision of law, Executive Council Resolution No. (6) of 2010 - Approving the Implementing Bylaw of Law No. (13) of 2008 (Regulating the Interim Property Register in the Emirate of Dubai), provides the investor's scenario in Article 13(2) where it states the following:

"Any area in excess of the net area of the sold Real Property Unit may not be taken into consideration. Unless otherwise agreed, the developer may not claim the values of such extra area."

Given the wording "unless otherwise agreed" used in Article 13(2) (i.e.) the developer would expect to be able to claim the payment for the increase.



Off plan property

RERA's stance

The cases were resolved by RERA's head after a number of investors held negotiations with RERA. The content of such discussions has not been disclosed to us, however it led to the developer dropping its demands for the additional payments from the investors.

The story of the investors of the named development and their disputes has been published in open news sources along with following statement taken from the CEO of RERA, Mr. Marwan Bin Ghulaita:

“In a friendly manner, we have managed to solve the issue between the investors and the developer following the laws and regulations issued by Dubai Executive Council, and based on Executive Council Resolution No (6) of 2010 Approving the Executive Regulation of Law No (13) of 2008 Concerning the Regulation of the Interim Real Estate Register in the Emirate of Dubai. Clause (2) of article (13) states that any area in excess of the net area of the sold Real Property unit may not be taken into consideration...

Unless otherwise agreed, the developer may not claim the value of such extra area. Based on what is mentioned above, the developer is not allowed to ask for an increase and there will be no extra charges on the investors.”

Closing comments

Whether this will set a precedent for such scenarios in the future remains to be seen and it also remains to be seen whether the courts, or arbitral tribunals, will rule on such a scenario in a different way given RERA's recent comments. We hope to see further regulations enacted officially that provide even more clarity to investors and developers and will serve to prevent unnecessary litigation. We will continue to follow changes to Dubai's real estate rules and regulations closely.

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