



Photo: Silvia Baro

■ The Executive Council's Decree No. 6 of 2010 will make the process of terminating purchase agreements more certain, faster and less costly for developers in Dubai

## Ending the off-plan stalemate

■ A new Decree enables developers in Dubai to terminate a defaulting investor's purchase agreement without the Land Department's approval.

**Shahram Safai and Nazanin Aleyaseen**

The profound effect that the global credit crunch has had on the Dubai real estate market has left purchasers and developers of off-plan projects in deep despair. Regulators have been striving for the last year and a half to balance the interests of developers, who were faced with numerous defaulting investors, with the interests of purchasers of units in projects where construction has not commenced or has completely halted.

In an attempt to clear this impasse, and provide much needed clarification on existing regulatory laws, the Land Department released the details of the highly anticipated Executive Council's Decree (No. 6 of 2010) which was issued on February 14. However, it had yet to be published in the Official Gazette at the time of *Property* going to press.

The most significant aspects of the Decree is that it enables developers

to terminate a purchase agreement by directly sending a termination notice to the purchaser without the approval of the Land Department or a court order and provides guidelines to the Land Department to cancel projects.

Prior to the issuance of the Decree, a developer seeking to terminate a defaulting purchaser was required to either commence civil proceedings in a court or arbitration, or to terminate the agreement through the Land Department.

Law No. 9 of 2009 required developers to notify the Land Department about defaulting purchasers. The Land Department provided 30 days to purchasers to remedy the default. During this period, the purchasers were also provided an opportunity to dispute the termination proceedings. If after 30 days the default was not remedied or the purchaser did not dispute the termination, then the Land Department determined whether the termination

### The Decree now sets out a formal mechanism by which the Dubai Land Department can cancel projects.

could proceed. In short, the termination would not be effective without the Land Department's approval or consent and the process was lengthy if the purchaser disputed the termination.

The Decree has significantly changed this termination process. In accordance with Article 15 of the Decree, the developer can now place the defaulting purchaser on notice directly with a copy to the Land Department.

The Land Department will still provide 30 days to the purchaser to

remedy the default. However, if at the end of the 30 days the purchaser has not remedied the default, the developer is entitled to terminate the agreement without requiring any consent or approval from the Land Department.

The Decree will therefore make the process of terminating purchase agreements more certain, faster and less costly for developers.

### Cancellation of projects

While purchasers, who are faced with developers that have not started construction or are otherwise in default of the regulatory laws, still have to look to the courts to terminate the purchase agreements, the Decree now sets out a formal mechanism by which the Land Department can cancel projects.

The Land Department, on receipt of a technical report, may cancel a real estate project in any of the following circumstances:

1. The developer, without an acceptable reason, has not initiated the building works, despite having obtained the necessary approvals to do so from the relevant authorities
2. The developer has violated provisions of Article 16 of Law No. 8 of 2007 concerning escrow accounts.
3. The Land Department has determined that the developer does not have serious intentions to implement the project.
4. The land on which the project is to be built is dispossessed due to violation on the part of the sub-developer towards the master developer.
5. The land on which the project is to be built has been replanned by authorities.
6. The developer fails to implement the project due to gross negligence.
7. The developer declares that it will not implement the project for reasons acceptable to the Land Department.
8. The developer declares bankruptcy.
9. Any other causes acceptable by the Land Department.

Once the project has been cancelled, the Land Department will ask the trustee of the project's escrow account to repay the sums deposited into the account or to the developer (if paid directly) to

the owners of the units within 14 days of the cancellation. In this event, if the balance of the project's escrow account is insufficient to satisfy the purchasers' payments, the developer must repay the sums within a period of no more than 60 days commencing from the date of issuing the project's cancellation.

#### Setting guidelines

Although Law No. 9 empowered the Land Department to cancel a project, prior to the Decree there was no formal mechanism or guideline by which the Land Department could do so. Now that this guideline is in place, purchasers who have invested money with defaulting developers can look to the Land Department to cancel the project as opposed to suing the developer, which is time-consuming, costly and uncertain.

Over the past year and a half, purchasers and developers have been investing considerable time and resources on litigation which, at the best of times, was uncertain. The Decree now enables developers to terminate defaulting purchasers and allows purchasers to look to the Land Department to cancel projects that



Decree No. 6 of 2010 enables the Land Department to cancel the project if it has been determined that the developer does not have serious intention of implementing the project

have not commenced or appear not to be going forward.

On the face of it, the Decree appears to be the first step in clearing the stalemate that is currently plaguing the off-plan real estate market in Dubai. It remains to be

seen, however, whether the developers, purchasers and the Land Department will exercise the rights and powers afforded to them under the Decree.

The writers are lawyers at the law firm Afridi & Angell