

RESEARCH ARTICLE	Legal Liability of Real Estate Developers in Blueprint Sales Contracts under Algerian Law
Batache Karima	Doctor (PhD) Faculty of Law and Political Science University of Batna 1 Algeria karima.hamza1823@gmail.com
Bouzitouna Lina	Doctor (PhD) Faculty of Law and Political Science University of 8 May 1945, Legal and Environmental Studies Laboratory Guelma - Algeria bouzitouna.lina@univ-guelma.dz
Doi Serial	https://doi.org/10.56334/sei/8.5.40
Keywords	Real estate developer, subscriber, legal liability, off-plan sales contract, ten-year guarantee.
Abstract The Algerian state strives to alleviate the housing crisis by implementing new urban planning schemes and advanced techniques, notably by enacting laws to regulate and manage the real estate sector. As part of this effort, it has introduced several modern Real Estate Promotion Law methods to regulate the contractual relationship between the real estate developer and the subscriber. Chief among these is the off-plan sales contract, under which the Algerian legislator holds the real estate developer fully legally accountable, imposing legal sanctions upon them. The developer's liability is highlighted on two fronts: civil liability in the civil context and criminal liability in the penal context, both triggered by a breach of contractual obligations stipulated in the agreement.	
Citation Batache K., Bouzitouna L. (2025). Legal Liability of Real Estate Developers in Blueprint Sales Contracts under Algerian Law. <i>Science, Education and Innovations in the Context of Modern Problems</i> , 8(5), 405-414; doi:10.56352/sei/8.5.40. https://imcra-az.org/archive/363-science-education-and-innovations-in-the-context-of-modern-problems-issue-5-volvi-2025.html	
Licensed © 2025 The Author(s). Published by Science, Education and Innovations in the context of modern problems (SEI) by IMCRA - International Meetings and Journals Research Association (Azerbaijan). This is an open access article under the CC BY license (http://creativecommons.org/licenses/by/4.0/).	
Received: 13.10.2024	Accepted: 06.02.2025
Published: 12.05.2025 (available online)	

Introduction:

Housing is one of the primary concerns of the Algerian state, which has undertaken various mechanisms to ensure its provision, recognizing it as one of the most urgent and essential commodities for individuals. To this end, the Algerian legislature introduced a set of contracts under Law No. 11-04 on real estate promotion to alleviate the housing crisis within a framework of legal regulation.

One of the most prominent of these contracts is the *off-plan sales contract*, which is considered one of the most modern forms and techniques in Algerian real estate promotion. The essence of concluding this type of contract lies in the role of the real estate developer, whose extensive expertise increases their responsibility toward the property buyer.

Although the foundation of the contract is mutual consent between the real estate developer and the purchaser, the developer's economic dominance often renders the buyer the weaker party in the contractual relationship. This imbalance has prompted the Algerian legislature to provide stronger legal protection for the purchaser by explicitly stipulating a range of responsibilities incumbent upon the developer.

To address contractual imbalances and breaches of obligations—and to enforce penalties in such contracts—it is necessary to define both the **civil** and **criminal liability** of the real estate developer under the off-plan sales contract, which gives rise to the following research question:

How Did the Algerian Legislator Address the Legal Liability of the Real Estate Developer in the Off-Plan Sales Contract?

To answer this question, we have adopted an analytical approach based on the following structure:

First Section: The Ten-Year Liability of the Real Estate Developer in the Off-Plan Sales Contract

- **First Subsection:** The Personal Scope of the Ten-Year Guarantee for the Developer in the Off-Plan Sales Contract
- **Second Subsection:** The Material Scope of the Ten-Year Guarantee in the Off-Plan Sales Contract

Second Section: The Criminal Liability of the Real Estate Developer in the Off-Plan Sales Contract

- **First Subsection:** Offences Committed Prior to the Contract by the Real Estate Developer
- **Second Subsection:** Offences Committed After the Contract by the Real Estate Developer

First Section: The Ten-Year Liability of the Real Estate Developer in the Off-Plan Sales Contract

The ten-year guarantee is a relatively modern legal concept that emerged due to real estate developers, contractors, and engineers resorting to rapid and modern construction methods to maximize profits within short timeframes. However, this approach has led to poor construction quality, posing serious risks to human lives and property.¹

In response, the Algerian legislator sought to mitigate such risks by establishing the ten-year liability as one of the key obligations incumbent upon the real estate developer under the off-plan sales contract, making it a fundamental pillar in protecting the purchaser.

Accordingly, this section is divided into two subsections:

- The first addresses the **personal scope** of the ten-year guarantee,
- The second deals with its **material scope**.

First Subsection: The Personal Scope of the Ten-Year Guarantee in the Off-Plan Sales Contract

Generally, a consumer contract entails an obligation between two parties: the professional, who is bound by the guarantee, and the consumer, who benefits from it. In the off-plan sales contract context, the real estate developer is considered the professional party, while the purchaser is regarded as the consumer. Therefore, the guarantee in this type of contract is a ten-year guarantee that necessarily implies the presence of both a debtor and a creditor.

1. The Debtors of the Ten-Year Guarantee

The legislator has explicitly identified the parties obligated under the ten-year guarantee in construction contracts, limiting them to the **contractor** and the **architect**, who are jointly and severally liable.² However, architectural activity is no longer limited solely to the contractor and the architect. Due to significant developments in this field, the construction process now involves a variety of actors with different specializations. Consequently, the construction process includes other participants, the contractor, and the architect. As a result, the provisions of the Civil Code alone are no longer sufficient to ensure adequate protection for the purchaser against the collapse or structural failure of the building.³

¹ Maasour, Fatima Zahra. 2017. "The Obligations of the Real Estate Developer in Off-Plan Sales Contracts Between Crisis and Reform." *Journal of Academic Research*, no. 3: 111.

² Algeria. 1975. *Article 554 of Ordinance No. 75-58 of September 26, 1975, Constituting the Civil Code*, amended and supplemented by Law No. 07-05 of May 13. *Official Gazette of the People's Democratic Republic of Algeria*, no. 31.

³ Boulennour, Najeeb, and Asmaa Saidan. 2021. "Guarantees for Achieving Legal Security for the Purchaser After the Handover of the Building in Off-Plan Sale Contracts." *Journal of Human Security*, vol. 6, no. 1 (January): 1332.

This prompted the legislator to intervene through Real Estate Promotion Law No. 86-07, expanding the scope of individuals bound by the ten-year guarantee and introducing new parties. According to Article 41 of this law⁴, the guarantee now includes any person who enters into a lease agreement with the project owner.

However, the numerous legal disputes brought before the courts—particularly those concerning the real estate developer's (subscriber's) refusal to formally assume ten-year liability for damages affecting the properties they constructed and the frequent occurrence of defects—led the Algerian legislator to explicitly impose ten-year liability on real estate developers under Law No. 11-04, as stipulated in Article 26.

It is evident from the provisions of Law No. 11-04, as well as Executive Decree No. 12-85, which contains the model specifications document defining the professional obligations and responsibilities of the real estate developer, in addition to Ordinance No. 95-07 concerning insurance and the model contract for off-plan sales annexed to Executive Decree No. 12-413, that the parties bound by the ten-year guarantee include the following:

– The Real Estate Developer (Promoteur Immobilier):

The term *promoteur immobilier* or "seller of constructed spaces" was first introduced by **Fernand Pouillon** in 1954. The term gained common usage in the mid-20th century to refer to the person responsible for financing and constructing apartment buildings.

– The Contractor:

This refers to the individual entrusted with the construction or erection of fixed structures based on provided designs in exchange for a fee and without being subject to supervision or management.⁵ The contractor is also defined as: "the person who, by agreement with the property owner and for a fixed remuneration, undertakes a specific task related to construction works, such as erecting, modifying, renovating, or demolishing a building."⁶ The Algerian legislator addresses the definition of the contractor in Article 3 of Law No. 11-04.

Subcontractors:

The Algerian legislature has imposed a ten-year liability on subcontractors involved in off-plan sales contracts, considering them jointly liable alongside other traditional stakeholders in the construction process toward the purchasers of real estate projects. This obligation is stipulated in **Article 45 of Law No. 11-04**, which states:

"Without prejudice to the provisions in force in the Civil Code and the Penal Code regarding the application of the provisions of this chapter, any clause in the contract that aims to exclude or limit the liability or guarantees stipulated in this law, or those provided for in the applicable legislation and regulations, or that seeks to restrict their scope—whether by excluding or limiting the joint liability of subcontractors with the real estate developer—shall be deemed null and void."

Furthermore, **Article 30, paragraph 2 of Executive Decree No. 12-85** affirms:

"The real estate developer shall bear, for a period of ten years, joint liability with design offices, contractors, partners, subcontractors, and any other stakeholder in the event of total or partial collapse of the building due to construction defects, including poor ground conditions."

Thus, it can be said that the aforementioned articles strictly require the exclusion and invalidation of any clause that exempts subcontractors from liability, in contrast to what is stipulated in the Civil Code. This legislative approach aims to reinforce the protection of real estate consumers against the abuse of power by the real estate developer, who is typically the stronger party in the contractual relationship—especially considering that the product in question is an unfinished property.

Design Offices:

⁴ Algeria. 1986. *Article 41 of Law No. 86-07* states: "The subscriber to a real estate promotion operation shall be liable, for ten years from the date of issuance of the certificate of conformity, for latent defects. This liability also applies to architects, contractors, and other persons bound to the project owner by a contract of hire of work."

⁵ Yassin, Abdul Razzaq Hussein. 1987. *The Specific Liability of the Architect and Construction Contractor: A Comparative Study in Civil Law*. 1st ed. [No publisher], p. 420-421.

⁶ Mansour, Mohamed Hassan. 2006. *Architectural Liability*. Alexandria: University Thought House, p. 89.

This new term introduced by Law No. 11-04 refers to engineers of all specializations. The role is no longer limited to the architect responsible for the construction but now includes all engineers specialized in real estate development. This broadening of scope was enacted to provide better protection for the real estate consumer.

Design offices consist of a team of engineers and technicians from various disciplines:

- **Architects**, responsible for bringing the project owner's ideas to life;
- **Civil engineers** are tasked with conducting the necessary calculations to ensure the stability of the structure;
- **Drafting technicians** who produce architectural blueprints;
- **Topographers**, who assess the terrain and geographical characteristics of the construction site;
- **Quantity surveyors**, responsible for preparing cost estimates and detailed project budgets;

...as well as other specialists who may be contacted by these offices, such as **electrical and mechanical engineers**.⁷

As for the term "**architect**" itself in the context of the *contract of sale on plans*, the legislator introduced it in **Decree No. 13-413** under the section relating to the **ten-year liability clause**. Doctrinally, the architect can be defined as:

"A person entrusted with the design, drawings, and models for constructing structures. They may also be tasked with managing the work, supervising its execution, reviewing the contractor's accounts, approving them, and authorising the disbursement of the amounts due."⁸

The **Algerian legislator**, for his part, defined the architect in **Article 09 of Legislative Decree No. 94/07** as:

"Any accredited architect responsible for designing and overseeing the execution of construction works."⁹

This definition highlights the **requirement of accreditation** to practice the profession of architecture and refers to the **execution and monitoring** of construction works. However, the legislator did **not clarify, either fully or partially**, what is meant explicitly by "monitoring." Moreover, **liability** is only **implicitly** indicated and not explicitly stated.

Therefore, in our view, this definition **lacks precision** regarding the **duties and obligations** of the architect.

Partners: The Algerian legislator did not explicitly define who the partners subject to the decennial guarantee are in the contract of sale on plans, as stipulated in Articles 49/2 of Law 11-04 and 30 of the model specifications defining the obligations and professional responsibilities of the property developer annexed to Executive Decree 12/85. However, through our analysis, we find that for a legal entity property developer, its partners are bound with it by the decennial guarantee, especially in the case of a partnership company, where the partner acquires the status of a trader upon joining and bears joint liability. Therefore, the partners of a partnership company are bound by the guarantee without referring to its legal representative, who alone would otherwise bear the guarantee.

Other Interveners: According to the content of Article 46 of Law 11-04 and Article 30 of the executive decree from the model specifications defining the obligations and professional responsibilities of the property developer, the Algerian legislator obliged the category of interveners to the decennial guarantee in the event of total or partial collapse of the building due to construction defects. However, it did not explicitly state who these interveners are. Therefore, we infer from our analysis of the content of the two aforementioned articles the following:

Public Works Laboratory:

Article 02 of Executive Decree No. 83/182 stipulates the following:

"...to carry out all applied research, studies, analyses, experiments, and inspections related to the materials used in public works and in construction falling within this domain, as well as to work on the establishment of major structures,

⁷ Housseina, Rimane. 2021. "The Real Estate Developer's Obligation to Guarantee Proper Execution in the Off-Plan Sales Contract." *Al-Bahith Journal for Academic Studies*, Faculty of Law and Political Science, Batna, vol. 8, no. 1 (January): 37.

⁸ Al-Sanhouri, Abdel-Razzak. 2011. *Al-Wasit fi Sharh al-Qanun al-Madani* [The Mediator in Explaining the Civil Law], vol. 1, part 7: *Contracts of Work, Agency, Loan for Use, and Custody*. Beirut: Al-Halabi Legal Publications, p. 109.

⁹ Algeria. 1994. *Executive Decree No. 94/07 of 7 Dhu al-Hijjah 1414 AH (18 May 1994) Concerning the Conditions of Urban Production and the Practice of the Profession of Architect*, Official Gazette No. 32 of 1994, amended and supplemented by Law No. 04-06 of 14 August 2004, Official Gazette No. 51 of 2004.

buildings, and their foundations."¹⁰ The Algerian legislature divided this laboratory into one national laboratory and four regional laboratories, all of which serve the same functions. These include studying construction materials and methods, conducting tests and inspections related to these materials and the structures incorporating them, and performing studies on soil properties required to ensure the stability of buildings and to determine their foundations.

The Technical Control Body for Construction (CTC) has the following key responsibilities:¹¹

- Reviewing design plans: No project from a public contract may commence without the body's approval of all the plans intended for field implementation.
- Continuous monitoring of construction work during execution, particularly approving the site for the foundation after excavation and reinforced concrete work.
- Inspecting all types of buildings to verify the stability, durability, and soundness of their structures and foundations.
- Critically examining all technical provisions included in projects, especially those concerning the design of significant works and related components, to ensure their conformity with building regulations and standards.

These two bodies serve merely as examples of the entities involved in the decennial liability system, as the Algerian legislature did not specifically name them nor highlight their roles. Instead, the legislator deliberately left the scope open to ensure broader protection for the real estate consumer in properties constructed based on design contracts.

The Algerian legislator has directed toward expanding the personal scope of the ten-year (decennial) liability to ensure adequate protection for the purchaser, particularly at a time marked by an increase in building collapses and numerous defects, especially after their delivery to consumers. To organize and facilitate real estate development activity, the property developer concludes contracts with various stakeholders who play complementary roles. These parties are indispensable in the technical and implementation aspects of real estate projects. Real estate development cannot proceed without the involvement of these parties, who are integrally linked to the developer in a complementary relationship. The developer cannot fulfill their mission independently due to the necessity of their involvement.

In the same context, Article 46 of Law No. 11/04 stipulates:

"The ten-year liability rests with design offices, contractors, and other parties involved who are contractually bound to the project owner, in the event of total or partial collapse of the structure due to construction defects, including poor soil quality at the foundation level."

Furthermore, Article 45 invalidates any clause that excludes or limits the joint liability of subcontractors with the property developer.

Compared to what is provided under general rules, the Algerian legislature has broadened the category of parties subject to decennial liability in contracts for sale based on plans. The property developer is principally held liable under the ten-year guarantee, and secondarily, the technical inspector, subcontractor, other involved parties, and partners are also held liable, provided that they are contractually linked to the project owner. However, the legislator did not specify the exact nature of this contract.

Secondly, Creditors in the Decennial Guarantee

In a contract for sale based on plans, the primary beneficiary of the provisions of the decennial guarantee is the **real estate consumer** (subscriber or buyer). This is due to their **contractual consumer relationship** with the professional (the property developer), who holds a stronger position in the contractual relationship. On the one hand, the consumer is the weaker party; on the other, the remaining parties jointly liable with the professional are often **unknown to the real estate consumer**, making it difficult for them to identify those responsible.

According to **Article 49, paragraph 3 of Law No. 11-04¹²**, the **decennial guarantee is transferred to the owner of the building** and is **not related to the property itself**. This is reinforced in **Article 178, paragraph 2 of Ordinance No. 95/07** on insurance, as amended and supplemented, which states:

¹⁰ Algeria. 1968. *Order No. 68/381 of 3 June 1968 Establishing the Laboratory*, repealed by several executive decrees issued in 1983.

¹¹ Algeria. 1971. *Order No. 71/85 of 29 December 1971 Establishing the Technical Construction Control Authority*, amended in 1986 concerning its organizational structure without affecting its main competencies, under Article 3 of Executive Decree No. 86/205.

"The beneficiary of this warranty shall be the project owner and/or its successive owners until the expiration of the warranty period."

Successive owners meant all those to whom ownership of the building has been transferred during the ten-year warranty period by any means of transfer of ownership, whether they are the general successor or the specific successor of the building owner or the project owner, based on the contract of work concluded between the real estate developer and each of the architect and the contractor. The real estate developer benefits from the warranty as the project owner, subject to Article 554 of the Civil Code.

Subsection Two: The Objective Scope of the Ten-Year Warranty

Given that the ten-year warranty in the off-plan sales contract is a special type of guarantee, the Algerian legislature classified it under a specific category of defects within a defined time frame. Therefore, its application is subject to both substantive and formal conditions.

First: Substantive Conditions

These consist of three essential conditions, which are as follows:

1—Existence of an Off-Plan Sales Contract:

The consumer in an off-plan sales contract may claim the ten-year warranty against the professional based on the consumer contractual relationship, which is founded primarily on the contract itself. In other words, this contract constitutes the legal basis for the consumer's recourse to the real estate developer under the ten-year warranty. However, if the recourse is made as a specific successor of the seller, it is based on the work contract, and the claim is made directly against the contractor and the architect.¹³

2— Construction of Buildings or Fixed Structures

According to Article 554 of the Civil Code, for the provisions of the ten-year warranty to apply, the subject of the contract of work and the off-plan sales contract must involve the construction of a building or fixed structures. However, it is noted that the legislator, under Law No. 11-04, did not explicitly mention fixed structures. This omission does not imply their exclusion from the scope of the ten-year warranty, as the law refers to the regulation concerning applying the provisions of Chapter Three of Law No. 11-04 to the Civil Code (Article 45, Law 11/04).

Building construction refers to "anything erected above ground level that constitutes fixed structures made by humans, regardless of the materials used." The legislator addressed this in Article 21 of the Joint Ministerial Decree issued on 15/05/1988, stating: "All works related to foundations, superstructures, fences, and roofs."

3 — Total or Partial Collapse of the Building

The liability specific to the real estate developer, as stipulated in Article 46 of Law No. 11-04 and Article 30 of Executive Decree No. 12-85, does not cover all damage to buildings. Instead, the ten-year warranty covers a particular category of damage characterized by its seriousness—namely, the total or partial collapse of the building.

In this context, collapse refers to the disintegration of the building or the detachment of its components from one another, wholly or partially—such as the fall of a roof or a balcony. The collapse must be involuntary and attributable to a defect in the construction, such as using poor-quality materials or defective artistry, including insufficient strength or inadequacy of the foundations, ceilings, and walls or flaws in their construction. The defect might also be rooted in the land on which the building was erected—for instance, if the land is marshy or unstable and the proper construction procedures, such as deepening the foundations to reach solid ground, were not followed.¹⁴

Second: Formal Conditions

¹² Algeria. *Law No. 11-04 of 17 February 2011 Determining the Rules Governing Real Estate Development Activities*, Official Gazette No. 14 (6 March 2011), Art. 49.

¹³ Lakto, Lamia. *The Sale Contract on Designs under Law No. 11-04 Governing Real Estate Development Activity*. Master's thesis, Contract Law Branch, Mouloud Mammeri University, Tizi Ouzou, 2013, p. 110.

¹⁴ Mansour, Mohamed Hussein. *The Legal System of Buildings and Constructions*. Alexandria: New University House, 2011, p. 114 ff.

Two essential elements must be fulfilled for the property purchaser to benefit from the provisions of the ten-year warranty: the *warranty period* and the *warranty claim*.

1 – The First Element: Warranty Period

According to the provisions of Article 554 (paragraph 2) of the Civil Code and Article 30 of Executive Decree No. 12-85, which contains the standard specifications defining the obligations and professional responsibilities of the real estate developer, the warranty period is ten (10) years. This period begins from the date of *final delivery* of the building. It must be noted that this duration is of public order and may not be reduced, extended, or waived by agreement.

The term *final delivery* here refers to the definitive handover of the property, not the *provisional* one. Provisional delivery occurs when the project owner or client takes possession and control of the works, typically within six months to one year, depending on the nature of the works. After the expiration of this period, the right to recourse against any party involved in the execution process—whether contractor, engineer, or real estate developer—expires.

2 – The Second Element: Warranty Claim

The ten-year warranty claim must be brought against the professional or other participants, as they are jointly liable under the sale-on-design contract. This claim must be filed within three (3) years, starting from the date of the collapse or the discovery of the defect, by Article 557 of the Civil Code. If the property purchaser fails to initiate the claim within the legally prescribed period, their right to the warranty lapses. For example, suppose the defect is discovered on the last day of the tenth year, and the collapse occurs. In that case, the beneficiary is still entitled to initiate the claim within the next three years.¹⁵

It is worth noting that this period constitutes a *statute of limitations* and is subject to the same rules that govern limitation periods, including suspension and interruption.¹⁶ This differs from French law, which treats the ten years simultaneously as a warranty duration and a limitation period.

Chapter Two: The Criminal Liability of the Real Estate Developer in the Sale-on-Design Contract

Criminal liability is "*the obligation of a person to bear the consequences of their criminal act.*" Accordingly, criminal liability is established to impose a penalty on anyone who commits an act punishable by law.

The establishment of criminal liability is based on a *criminal fault*, which must adhere to the **principle of legality** (*nullum crimen, nulla poena sine lege*). Based on this criminal fault committed by the real estate developer, the Algerian legislator has defined its forms within **Law No. 11-04** concerning real estate development activities. Based on these forms, the criminal liability of the real estate developer is determined.

Real estate developers' criminal liability may be defined as the **penalty resulting from the breach of any of their professional obligations**, the violation of which leads to criminal sanctions. Based on the above, this liability can be examined in two sections: the first concerns **offenses committed prior to the conclusion of the sale-on-design contract**, and the second relates to **offenses committed thereafter**.

Section One: Offences Committed Prior to the Conclusion of the Sale-on-Design Contract

In **Law No. 11-04 on Real Estate Development**, the Algerian legislator specified the number of offenses the real estate developer may commit before the sale-on-design contract is concluded. These offenses are punishable by imprisonment and financial penalties, as follows:

1. Offence of Failing to Provide Mandatory Information and Data

According to **Article 76** of **Law No. 11-04**, the legislator imposed a sanction on any real estate developer who fails to disclose the mandatory information listed in **Article 30** of the same law, which enumerates this information exhaustively.

The text of Article 76 reads:

¹⁵ Samir Abdelsami' Al-Ouden, *Ḍamān al-'Uyūb al-Khaliyya Allāf Taqā' 'alā 'Ātiq Bā' i' al-'Aqār wa-Mushayyid al-Binā' min al-Muqāwilīn wa-l-Muhandisīn* [Liability for latent defects incumbent upon real estate sellers, contractors, and engineers] (Alexandria: Maktabat al-Ishrā' lil-Tibā'a wa-l-Nashr wa-l-Tawzī', 2000), 24.

¹⁶ Lamia Laktou, *op. cit.*, 2013, 179.

*"Within the framework of a sale-on-design contract or a reservation contract, any real estate developer who fails to inform the purchaser or reservation holder of the data and information provided for in Article 30 of this law shall be subject to a fine ranging from 200,000 DZD to 2,000,000 DZD."*¹⁷

Thus, if the real estate developer concludes a sale-on-design contract without including essential information about the property—such as the origin of ownership, subdivision permits, site planning certificates, and building permits—they are liable for the fine stipulated above.

2. Providing False Information During Documentation and Declarations

The Algerian legislator requires that the real estate purchaser be informed of all necessary and accurate information regarding the project, as stipulated in Article 41 of Law No. 11-04¹⁸ Criminal sanctions apply in real estate development if the developer provides false or misleading information that does not reflect the reality of the project.

According to Article 75 of the same law:

"Any real estate developer who provides false or incomplete information in documents, contracts, or transactions in the framework or context of a real estate development shall be subject to a prison sentence of between one (1) month and five (5) years and a fine ranging from two hundred thousand dinars (200,000 DZD) to two million dinars (2,000,000 DZD), or to one of these two penalties."

3. Offence of Demanding or Accepting an Advance or Subscription Deposit Before Signing the Contract

Most legal disputes before the promulgation of **Law No. 11-04** were due to purchasers (subscribers) paying financial advances to real estate developers without the actual commencement of the project and legal guarantees. These situations led to numerous legal complications, which the Algerian legislator sought to address through **Article 71** of the said law.

Article 71 of Law No. 11-04 stipulates:

"Any real estate developer who demands or accepts an advance, a subscription deposit, or a commercial instrument before the signing of the off-plan sales contract or the reservation contract shall be subject to a prison sentence ranging from two (2) months to two (2) years and a fine ranging from two hundred thousand (200,000 DZD) to two million Algerian dinars (2,000,000 DZD)."

Thus, a developer who **demands or accepts payment** (whether in cash, advance, or commercial instrument) **before signing the off-plan sales contract** is **legally liable** under this provision.

Moreover, the Algerian legislature has clearly **defined the installment payment structure** according to the project's progress. If the developer **demands payments before the specified construction milestones** are reached, they are also subject to the penalties prescribed in **Article 71 of Law No. 11-04**¹⁹ Concerning real estate development activities.

Section Two: Offences Committed After the Conclusion of the Off-Plan Sales Contract

The Algerian legislature's effort to regulate the off-plan sales contract technique is reflected in the protections granted to property purchasers against offenses committed by the real estate developer during the process of property handover. Penalties involving imprisonment and financial fines have been prescribed, as detailed below:

1. Offence of Failing to Notify Purchasers of the Co-Ownership Regulations

The Algerian legislator requires the **real estate developer** to prepare a **co-ownership regulation (règlement de copropriété)** outlining all **legal and financial information**. This regulation specifies:

- The **common areas** and **private units**,

¹⁷ Algeria, *Law No. 11-04 of 17 February 2011, establishing the rules governing real estate development activity*, art. 71, Official Journal No. 14, 6 March 2011.

¹⁸ Algeria, *Law No. 11-04 of 17 February 2011, establishing the rules governing real estate development activity*, art. 41, Official Journal No. 14, 6 March 2011.

¹⁹ Algeria, *Law No. 11-04 of 17 February 2011, establishing the rules governing real estate development activity*, art. 71, Official Journal No. 14, 6 March 2011.

- The **modes of usage**,
- The **rules govern the management** of these shared spaces and property operations.

The real estate developer is obligated to **notify the purchaser** of this co-ownership regulation within the deadline specified in the contract prior to the delivery of the building.

Failure by the developer to fulfill this obligation results in **criminal liability**, as stipulated in **Article 72 of Law No. 11-04** on Real Estate Promotion Activities.²⁰

The Algerian legislator has emphasized that the real estate developer is **legally obligated** to notify the property purchaser of the **co-ownership regulations prior to the delivery of the building** and within the **contractually specified timeframe**. This requirement is explicitly stated in **Article 38 of Law No. 11-04**, which sets out the rules governing real estate promotion activities.²¹

As a **penalty for non-compliance**, the legislator has established a **financial fine**, ranging between **200,000 Algerian dinars** and **2,000,000 Algerian dinars**.

Secondly, The Offence of Violating the Provisions on Property Transfer

The Algerian legislator has obliged the real estate developer to transfer property ownership to the purchaser upon completion of the works within three months from the provisional delivery of the building or a part thereof. This must be done by resorting to a notary to prepare the contract in exchange for full payment of the housing amount, as per Article 33 of Law No. 11-04.²²

The real estate developer's obligation to transfer the property's ownership necessarily entails its delivery; ownership cannot be transferred unless the purchaser delivers and inspects the property. The Algerian legislator has required that the delivery process be evidenced through a formal report, which must be drafted and filed at a notary's office. Any violation of these provisions constitutes a breach of the statutory deadlines for transferring ownership. Article 73 of Law No. 11-04²³ imposes a penalty on the real estate developer who fails to comply with this obligation in the form of a financial fine ranging from 200,000 to 2,000,000 Algerian dinars.

Conclusion

Based on the foregoing, it can be concluded that the Algerian legislature introduced the mechanism of the *sale on plans* (vente sur plans) contract to mitigate the housing crisis, as it allows individuals to purchase housing within their financial capabilities. However, when this type of contract was applied in practice, it gave rise to numerous disputes between subscribers and real estate developers, the most prominent of which involved fraud and deception. Therefore, the Algerian legislature established legal protections for property purchasers within the sale-on-plans contract framework by instituting safeguards in their favor and placing legal liability on the real estate developer, considered the stronger party in this contractual relationship. The developer's liability persists even after the delivery of the constructed property, and penalties are imposed in the event of any breach of the obligations incumbent upon him.

Legislative Texts

1. Algeria. 1975. *Article 554 of Ordinance No. 75-58 of 26 September 1975, Concerning the Civil Code*, as amended and supplemented by Law No. 07-05 of 13 May 2007. *Official Gazette* No. 31.
2. Algeria. 1968. *Ordinance No. 68-381 of 3 June 1968*, repealed by several executive decrees issued in 1983.
3. Algeria. 1994. *Legislative Decree No. 94-07 of 18 May 1994 (7 Dhu al-Hijjah 1414), Concerning Urban Production Conditions and the Practice of the Architecture Profession*. *Official Gazette*, No. 32 of 1994. Amended and supplemented by Law No. 04-06 of 14 August 2004. *Official Gazette*, No. 51 of 2004.

²⁰ Algeria, *Law No. 11-04 of 17 February 2011, establishing the rules governing real estate development activity*, art. 72, *Official Journal* No. 14, 6 March 2011.

²¹ *Ibid.*, art. 3.

²² *Ibid.*, art. 33.

²³ *Ibid.*, art. 73.

4. Algeria. 2011. *Law No. 11-04 of 17 February 2011 Determining the Rules Governing the Activity of Real Estate Promotion. Official Gazette*, No. 14 of 6 March 2011.

Books

1. Al-Awdan, Samir Abd al-Sami'. *Daman al-'Uyub al-Khafiyya Allaḥ Taqā 'ala 'Atiq Bā'i' al-'Aqār wa-Mushayyid al-Binā': al-Muqāwil wa-al-Muhandisīn*. Alexandria: Maktabat al-Ishrā' li-al-Ṭibā'a wa-al-Nashr wa-al-Tawzī', 2000.
2. Yasin, 'Abd al-Razzāq Ḥusayn. *Al-Mas'ūliyya al-Khāṣṣa bi-al-Muhandis al-Mi'nānī, Muqāwil al-Binā': Dirāsa Muqārīna fī al-Qānūn al-Madani*. 1st ed. [n.p.], 1987.
3. Al-Sanhūrī, 'Abd al-Razzāq. *Al-Wasīṭ fī Sharḥ al-Qānūn al-Madani: al-Mujallad al-Awwal, al-Juz' 7, al-'Uqūd al-Wārīda 'ala al-'Amal: al-Muqāwala wa-al-Wikāla wa-al-'Arīyya wa-al-Ḥirāsa*. Beirut: Manshūrāt al-Ḥalabī al-Ḥuqūqiyya, [n.d.].
4. Manṣūr, Muḥammad Ḥusayn. *Al-Mas'ūliyya al-Mi'nāriyya*. Alexandria: Dār al-Fikr al-Jāmi'ī, 2006.
5. Manṣūr, Muḥammad Ḥusayn. *Al-Nizām al-Qānūnī li-al-Mabānī wa-al-Munsha'āt*. Alexandria: Dār al-Jāmi'a al-Jadīda, 2011.

Master's Thesis

1. Lakto, Lamia. *'Aqd al-Bay' 'ala al-Taṣāmīm fī Iḥār al-Qānūn Raqm 11-04 al-Muḥaddid li-Qawā'id Nashāt al-Tarqiya al-'Aqāriyya* [Contract of Sale on Blueprints within the Framework of Law No. 11-04 Defining the Rules of Real Estate Promotion Activity]. Master's thesis, University of Mouloud Mammeri, Tizi Ouzou, 2013.

Articles

1. Hassina, Riman. "Iltizām al-Muraqqī al-'Aqār bi-Ḍamān Ḥusn al-Tanfīdh fī 'Aqd al-Bay' 'ala al-Taṣāmīm" [The Real Estate Promoter's Obligation to Guarantee Proper Execution in the Contract of Sale on Blueprints]. *Al-Bāḥith li-al-Dirāsāt al-Akādīmiyya* [The Academic Researcher Journal], Faculty of Law and Political Science, University of Batna, vol. 8, no. 1 (January 2021).
2. Fatima Zahra, Maṣ'ūr. "Iltizāmāt al-Muraqqī al-'Aqār fī 'Aqd al-Bay' 'ala al-Taṣāmīm bayna al-Azma wa-al-Iṣlāḥ" [Obligations of the Real Estate Promoter in the Sale on Blueprints Contract between Crisis and Reform]. *Al-Bāḥith li-al-Dirāsāt al-Akādīmiyya* [The Academic Researcher Journal], no. 3 (2017): 111.
3. Boulnoir, Najeeb, and Asmā' Sa'īdān. "Ḍamānāt Taḥqīq al-Amān al-Qānūnī li-al-Muqtanī ba'da Taslīmih al-Bināya fī 'Aqd al-Bay' 'ala al-Taṣāmīm" [Guarantees for Ensuring Legal Security for the Buyer after Delivery of the Building in the Blueprint Sales Contract]. *Majallat al-Amn al-Insānī* [Journal of Human Security], vol. 6, no. 1 (January 2021).