



## The Conceptual Framework of Real Estate Developer

**Zeena Ghanim Younis Al-Ubaidi**, Professor Dr. of Civil Law, University of Mosul / College of Law, Dean of Law at University of Nineveh, [Zeena.ghanim@uoninevah.edu.iq](mailto:Zeena.ghanim@uoninevah.edu.iq)  
**DalyaSaleh Ghazi**, Dr. University of Mosul / College of Law, [Dalya.salehaa91@gmail.com](mailto:Dalya.salehaa91@gmail.com)

**Abstract-** Everywhere nowadays, a real estate developer occupies an essential role in achieving progress of countries in the various fields of urban development, commerce and industry whether in establishing new projects and rebuilding or renewing the already existing enterprises. He is indeed any person who has the conditions that qualify him to perform the profession of real estate development. An example of these conditions are eligibility, financial ability, experience, expertise and other conditions, which contribute in creating a safe environment for those who deal with real estate developers and protects from them deceit and treachery. Meanwhile, such safe environment shall enable the real estate developer to do his job properly as he is the one who is responsible for supervising, administering and controlling the developmental projects. Besides, he is the person who is in charge through the whole process of coordinating all issues between the related parties. It is remarkable to note that a real estate developer does not carry out the physical part of the project, which is often implemented by contractors neither does he finalize the engineering designs, plans and drawings of the enterprise, that are done by architects. A real estate developer, however, is the one who is responsible for administering and controlling the implementation process of the project from the start to the end until it is delivered to its owners. Accordingly, it has become quite necessary to investigate the issue of the real estate developer due to a number of factors, such as the critical situation of housing in general, increase of blighted areas as well as the devastation and destruction that have stricken our beloved cities, including Mosul Governorate. There are what we may call emergent requirements for building and renewing these cities through the familiar undertaken developmental activities as well as other types of sales related to the real estate developer, such as map sale, design sale and right conservation sale. For this and more, we have selected this issue to be the core topic of our current research. We should also keep in our mind that the Iraqi legislator has not been serious in dealing with the various regulations of the real estate developer, and just referring to them here and there with very minor and simple texts. In the Iraqi Investment Law No. 13 for the year 2006, amended by the Law No. 50 of 2012. We finally hope that we could have some positive role in establishing and issuing sound legal regulations for the real estate developer.

**Keywords:** Conceptual Framework, Real Estate Developer, Legal Regulations.

### I. INTRODUCTION

Many countries have paid great attention to the processes of reconstruction as they are highly influential on the various aspects of modern life, including social, economic and commercial attitudes. One of the solutions that these countries have created for the purpose of achieving their goals is what we call the real estate development, being the cornerstone for establishing enterprises, as well as developing and operating them. However, our main concern here is related to the real estate developer who constitutes the dynamic center in every successful real estate investment. One of the countries that has adopted this system is the State of Qatar in the Qatari Law of Regulating Real Estate Development Activities No. 06 of 2014. The Algerian legislator has also adopted this system in the Algerian Law of Regulating Real Estate Development Activities No. 11 - 04 of 2011.

As we mentioned above, the Iraqi legislator has not been serious in dealing with this issue. He has only included some hints about the real estate development in the Investment Law No. 50 of 2015, the second amendment for the Investment Law No. 13 Of 2006. The Iraqi legislator's attempts indeed has only incorporated a definition to "the real estate developer" stipulating some of his obligations, but without identifying legal regulation for the profession, similar to other regulations, which regulate professions in general. We should keep in our mind that the issue of real estate development is of great importance to a country like Iraq after all the crises and wars that this country has witnessed leaving it in chaotic status. Furthermore, the other types of sales that have appeared recently, such as map sale, design sale and right conservation sale shall be taken into consideration too since they constitute an essential part of the real estate developer's responsibilities. Accordingly, we have divided our research into two main parts. The first part focuses on the definition and conditions of a real estate developer, while in the second part, we discuss the similarities and differences between real estate developers, contractors and architects.

## 1. Definition of Real Estate Developer & Conditions of Performing the Job

When dealing with a legal term, It is necessary first to come up with its definition as per the legislative, jurisprudential and judicial references. In addition to the definition of a real estate developer, we shall focus in this part of the research on the conditions required for performing the job of real estate development.

### 1.1 Definition of Real Estate Development

For the purpose of understanding the concept of real estate developer, we should refer to the definition given by the legislations that regulate the aspects of this job as well as other definitions proposed by jurisprudence and judiciary.

As for the legislative definition, it is remarkable at first to note that the legislations, which regulate the job of a real estate developer have used different names to refer to the same profession. For example, the Iraqi and Qatari legislators refer to this job by using “real estate developer” as mentioned before. The Algerian legislator, on the other hand, utilizes the term “real estate promoter”. While the Moroccan legislator has invented the name “real estate inspector” to refer to this job.

On one hand, the Iraqi legislator has included a definition to the real estate developer in the Iraqi Investment Law No 50 of 2015, the second amendment of the Investment Law No. 13 of 2006. Article No. 01, Paragraph No. 12 of the law in question, the legislator has defined the real estate developer as “a natural or legal person who has already obtained an investment license for strategic projects in the sector of construction or in any other developmental sector provided that the activities shall be located outside the original design as recommended by the Commission and approved by the Council of Ministers”.

The definition above differentiates between the developer who is licensed to do investment business in developmental projects and the real executer to these enterprises as the developer is not required to do the actual implementation of projects by himself. His work sometimes is limited to the activities of administration, supervision and control.

The Algerian legislator on the other hand has included a definition to the real estate promoter in Article No. 03 of the Algerian Law of Regulating the Activities of Real Estate Promotion. The definition stipulates that a real estate promoter is “any natural or legal person who is indulged in the construction of new buildings, or in the businesses of renovation, rehabilitation, renewal, restructuring, or reinforcement of buildings, or preparing and rehabilitating networks for the purpose of renting or selling them”. The Algerian legislator therefore has expanded the definition to include, in addition to the promoter, other people, such as contractors, engineers and laborers.

As for the Qatari legislator, he has defined the real estate developer in Article No. 01 of the Qatari Law of Regulating Real Estate Development Activities No. 06 of 2014. The definition states that a real estate developer is “any natural or legal person who is licensed for performing the businesses of real estate development”. We note that the Qatari legislator has also expanded the scope of the developer’s profession to include other people involved in the development process.

If we now shift to the attitude of jurisprudence towards the definition of “real estate developer”, we notice that some interpreters have defined him as “the natural person who, for an agreed amount of wage, becomes in charge of administering the architectural processes by doing all the required activities, such as financing, managing and pursuing all necessary legal actions in the name of the employer until delivery of real estate” (Hayat, 2015). In this definition, there is an attempt to give the whole responsibility of the developmental process to the real estate developer. In other words, he shall be in charge of financing, managing and concluding all legal actions. However, the definition has ignored that the real estate developer could be the employer himself, and therefore everything will be in his name.

As for the Western French Jurisprudence, they have defined real estate developer as “a natural or legal person representing a production company, which is in charge of performing all the processes of building real estates”. This definition is quite broad and it is not limited to the developer, but rather includes contractors, laborers and others whose work overlaps with that of the developer’s and contribute in building real estates.

Finally, we turn to the judiciary’s attitude towards the real estate developer and how it has defined his job. Unfortunately, we could not find a definition suggested by the Iraqi or the Algerian and the Qatari judiciaries. On the contrary, the French judiciary has come up with a definition. It has been defined for the first time in France by the criminal judiciary due to the need to identify the criminal liability of professionals in the real estate field who have been very indecent in using their authorities. It is the same concept stated in the ruling issued by the Paris Court of Appeal on 12<sup>th</sup> June, 1963, and the definition states that a real state developer is “the person who initiates and regards the main processes of accomplishing the construction” (Fatma& Rima, 2017). We notice that this definition has implicitly distinguished between the real estate developer and the others as the former is the person who

undertakes and keeps an eye on the main processes of the project. However, this definition has been criticized for being limited to building operations, whereas the development activities also include rehabilitation, renewal as well as the evolution of commercial, industrial and other social projects.

After reviewing the definitions as stipulated by legislation, jurisprudence and judiciary, we may come up with a unified definition and as follows: “ A real estate developer is a natural or legal person who is authorized to take all the initiative decisions related to real estate development activities within a legal framework, which regulate the relationship with those who might interfere in the evolution process in one way or another.

### **1.2 Conditions of Performing Real Estate Development Job**

In recent years, people in general have been showing strong inclination to contract with companies and offices in the field of real estate development. As a result, many false developers have appeared with the aim of defrauding individuals, and for the purpose of putting an end to the processes of embezzling, the legislation that regulates this profession has set a number of conditions required of those who determine to perform the real estate development job. These conditions can be summarized as follows:

#### **a. Nationality**

Some legislations have stipulated that those who perform the profession of real estate development shall hold the nationality of the country in which they do the job whether he is a natural or a legal person (see Article No. 03 of the Qatari Law of Regulating Real Estate Development Activities, No. 06 of 2014). The reason behind stipulating this condition is the inclination to create the ground for protecting citizens. However, including such condition has made the citizens of the State as the sole owners to the job of real estate development, and thus closing the door in the face of foreign companies, especially when some projects need huge amounts of money that cannot be provided by citizens.

#### **b. Commercial Eligibility**

Some legislations have stipulated that the person who performs the profession of real estate developer shall be a merchant with commercial eligibility through which he could conduct all the required legal actions (Zarrouq, 2017). In addition, he shall be responsible in person for the businesses he executes within the framework of the developmental process (Ammar, 2000).

#### **c. Experience, Competence & Financial Ability**

It has been stipulated that the person who performs the job of a real estate developer shall have the required experience and competence, which enables him to do the developmental tasks in a professional way. Furthermore, he shall be financially capable of meeting his obligations and covering the requirements of activities within his responsibility. Such financial ability will help him to avoid bank loans and their consequences (Rabi’a, 2012).

#### **d. Non-Criminal History**

Some legislations stipulate that the real estate developer has not been sentenced to any judicial punishment that might breach the traits of trust, honesty and integrity, such as theft, fraud and false testimony. Having a non-criminal history is highly required for a real estate developer as it leaves a state of relief among customers (see Article 20 of the Algerian Law of Regulating the Activities of Real Estate Promotion, No. 11-04 of 2011).

#### **e. Real Estate Developers’ Membership**

Some legislations have stipulated that real estate developers shall be enlisted in a specific register which includes required data about the developer, such as his name, surname, place of residence, etc. The reason behind such condition is to let others know everything about the real estate developer, such as his financial status for example (Mograni, 2020). Such information shall lead to enhancing confidence and achieving relief among customers (Muhriz, 1980). It is remarkable to note that the Iraqi legislator has not referred to these conditions, and therefore, no provision has been provided for them, which is considered as an imperfection that should be avoided. According to what has been stated, we suggest the following:

In conclusion, a real estate developer shall have the following features:

- In Case of a Natural Person
  - i. His age shall not be less than 25.
  - ii. He shall have at least three years of experience in the field of managing and executing developmental activities when submitting for the job.
  - iii. He has not been sentenced in one of the following acts unless he is rehabilitated:

- Forgery, theft and bribery
- Fraud and deceit
- Breach of trust and false testimony
  - In Case of a Legal Person
- i. One of his purposes is to engage in the activities of real estate development.
- ii. He shall have experience in this field for a period not less than three years before submitting the application.
- iii. He could manage his projects financially.
- iv. He has not been ruled bankrupt.
- v. No judgment has been issued against him or against one of the founding partners for committing one of the following acts:
  - Forgery, theft and bribery
  - Fraud and deceit
  - Breach of trust, perjury and false testimony
  - He shall be enlisted in the record of real estate developers.

## 2. Similarities & Differences between Real Estate Developers, Contractors and Architects.

Undoubtedly, a real estate developer does not do alone the whole processes of developing buildings and other facilities whether residential or commercial and industrial. There are other people indeed whose activities interfere with his responsibilities as a real estate developer. It has been necessary therefore to differentiate between the type of activities performed by the developer and the types executed by others. Such differentiation is highly required as we need to carefully identify the real and effective role played by a real estate developer, and subsequently to accurately determine his responsibilities. This part of the research has been divided into two sections. While in the first section we deal with the differences between real estate developers and contractors, in the second section, we focus on differences between architects and developers.

### 2.1 Similarities & Differences between a Real Estate Developer and a Contractor

There is often some kind of cooperation between a real estate developer and a contractor to finalize their projects. However, the contractor is the person who signs a contract often with the employer, in which he pledges to perform a specific work for an amount of money to be determined in advance (Shasho, 2010). This could lead to some confusion between the latter, i.e. the contractor and the developer. We shall attempt here to distinguish between the two.

#### 2.1.1 Similarities

Similarities between a real estate developer and a contractor can be summarized as follows:

- i. A real estate developer and a contractor both work in the field of construction. The essence of this work is represented in developing buildings and establishments (Ayashi, 2012).
- ii. Both of them could be a natural or legal person, public or private (Hussain, 2014).
- iii. Each one of them is committed to achieve a target represented in finalizing the tasks within his responsibility and delivering them on time otherwise he shall be considered as negligent (Ghargan, 2010).
- iv. Both of them are committed to what is known as the ten-year guarantee, i.e. they are obligated to what shall happen within ten years of total or partial demolition to the buildings or other facilities they construct (Hamid, 2016). The ten-year period starts from the moment of completing work, and each of them indeed is a guarantor for what shall happen to these buildings during the ten years in question (Al-Jhaish, 2020).
- v. Their commitment is confined to a specific period of time, by its end, this obligation shall come to an end as well (Ajeel, 2016).
- vi. Each one of them has his own scope of work, which focuses on real estates only (Al-Suaidi, 2018).

#### 2.1.2 Differences

As for differences between a real estate developer and a contractor, they can be summarized as follows:

- i. The real estate developer is the one who takes the lead in controlling and supervising all the activities of real estate development whereas the contractor is the person who is in charge of the material and actual implementation of these activities (Hamoush, 2012).
- ii. In some developmental projects, the real estate developer is committed to transfer the ownership to the beneficiary, whereas the contractor's job is confined to processes of implementation only as the project's ownership does not refer to him (Salih& Mahdi, 2016).

We may conclude that the contractor is the person in charge of implementing the works of construction as per the designs developed by the architect and in accordance with the terms and conditions agreed upon, whereas the developer's main job is to supervise, control and coordinate through the whole process of construction from the start of the project until handing it over to the owners.

## **2.2 Similarities & Differences between a Real Estate Developer and an Architect**

An architect is the person whose job is to prepare the designs for the construction project utilizing the knowledge he has acquired during his study (Al-Badran, 2017). Another part of his job is to supervise the proper implementation of the designs he has developed (Al-Sanhouri, 2009). Since he is the innovator of the architectural designs (Al-Awdin, 2004), he is highly qualified to identify the procedures of developing the plans and their contents, and even selection of colors (Hamoush, 2012).

Our next step is to concentrate on the main similarities and differences between a real estate developer and an architect.

### **2.2.1 Similarities**

We could summarize the similarities between a real estate developer and an architect as follows:

- i. They are both committed to the ten-year guarantee according to which they are responsible for the buildings and facilities they have constructed or modernized for ten years starting from the moment of completing and delivering the project to the owner (Rafi'a, 2018).
- ii. Each one of them has his own personality, which is taken into consideration when signing a contract with them. Part of this personality are their qualifications that are subject for evaluation as they have an essential effect on the feasible implementation and completion of the project. The certificates and degrees that he has obtained before as per prior works are included (Makki, No Date). The Iraqi legislator in Article No. 888, Paragraph 03 of the Iraqi Penal Code, No. 40 of 1951 refers to these features stipulating that "the contractor's personality is always taken into consideration when signing a contract with an artist, or with an architect or with one of those who perform a liberal profession, which presumes the requirement for such characteristic to be available in the workers unless there is evidence or custom necessitates something else"

We could see that the text stated above of the Iraqi legislator assumes that the personality whether of the real estate developer or of the architect is open for discussion in this type of jobs, i.e. the liberal ones.

### **2.2.2 Differences**

The main differences between a real estate developer and an architect can be summed up as follows:

- i. The architect is the person who is responsible for developing the plans, the engineering designs and the measurements required for construction (Shanab, 2004). His performance therefore is of mental nature (Yasin, 1985) depending mainly on intellectual efforts on which he receives his fees (Nsaif, 2016). As for the real estate developer, he is the person who is in charge of supervising and coordinating all internal operations of the project. In addition, he also systematizes all the activities that fall within the framework of studies and research as part of developing the project in question.
- ii. Being authorized by the owner (Bornan, 2014), the architect develops the drawings, designs and models of the project, and sometimes he may give advice about the selection of the most suitable contractor who could successfully implement his designs (Hamoush, 2012), whereas the real estate developer is the one who takes the lead and administers the various processes of the project until it is completed.
- iii. An Architect performs a non-commercial profession, and accordingly he does not have to enlist his name in a commercial registry. On the contrary, a real estate development carries out a commercial business as per the nature of his activity (Nseema, 2009).

- iv. The architect's supervision is of a technical nature, i.e. how his designs are implemented by the contractor. The real estate developer's supervision, on the other hand, is of financial and administrative nature (Yasin, 1985).

## II. CONCLUSIONS & RECOMMENDATIONS

We should come up now with our conclusions and recommendations.

### Conclusions

We have concluded the following:

- The real estate developer is the person who is responsible for administering and supervising all the construction activities of the project within a legal framework, which regulates the relationship between him and those who interfere in the development process.
- The profession of real estate development is a well-organized job which requires from those who perform it to be featured with competence, experience, financial ability, good conduct and other that shall make customers feel relieved when dealing with a real estate developer, and protect them from any fraud actions that might be committed by some of these developers.
- The personality of a real estate developer is quite distinct from other people who perform certain jobs in the construction of the project. He is in charge of management, supervision, guidance and coordination between all the parties of the development process, and he is not responsible for any material implementation like the contractor and he does not develop any drawings or designs like the architect.

### Recommendations

We recommend that the Iraqi legislator shall come up with a special legal regulation, which organizes the various aspects of the real estate developer's job so as to enable him to perform tasks properly and meanwhile protect customers.

## REFERENCES

1. Ajeel, Tariq Kadhim (2016). Contracting Mediator. First Edition. Lebanon, Beirut: Al-Sanhouri Bookshop. P.11 and after.
2. Al-Angoud, Dr. Kamil Khalaf & Khabsi, Mumtaz Matlab (2013). Foreign Investment & its Guarantees in the Iraqi and Comparative Laws. Volume 03, Issue No. 10.
3. Al-Awdin, Samir Abdul-Sami' (2004). Liability of Consultant Engineer and Contractor in Civil Contracts & Turnkey Contract. Alexandria: Al-Ma'arif Foundation. P. 40.
4. Al-Badran, Basil Jabbar (2017). The Supervising Resident Engineer in a Constructional Contract: A comparative study based on the Iraqi and Jordanian laws. MA Dissertation submitted to College of Law, Middle East University. P. 40.
5. Al-Jhaish, Falah Karim Wannas (2020). The Ten-Year Guarantee of the Contractor & Architect Liability in the Iraqi Law. Lebanon, Beirut: Al-Sanhouri Bookshop. P.11.
6. Al-Nasir. Abdul Muhsin Yousif (1989). Real Estate Investment in the Islamic Economy. MA Dissertation submitted to Higher Studies Department in Um Al-Qurra' University.
7. Al-Qudra, Mahmoud Muhammad Mustafa (2007). Impact of Investment in the Industrial Cities of Palestine in providing job opportunities. MA Dissertation submitted to College of Commerce, Department of Accounting & Finance. Gaza: Islamic University.
8. Al-Sanhouri, Abdul Razzaq (2009). The Mediator in Explaining the New Civil Law, Contract of Labor, the Contractor, Authorization, Deposit and Guarding. Volume 07, Third Edition. Lebanon, Beirut: Al-Halabi for Legal Publications. P.109.
9. Al-Suaidi, Mouza Swaid Salim Swaid (2018). Real Estate Sale on Map As Per UAE Laws: A Comparative Study. Ph.D. Research submitted to College of Law. UAE University. P. 63.
10. Ammar, Ammoura (2000). Explaining the Algerian Commercial Law, Commercial Businesses, The Trader, & Commercial Companies. Algeria: Dar Al-Ma'rifa. P. 45.
11. Ayashi, Sha'ban (2012). A Sale Contract on Design: A Comparative Study. Ph.D. research. Algeria: Mentoury University of Constantine. P. 09 and after.

12. Bin Ayyad, Mustafa (1993). Tax Incentives as a Means of Development in Morocco: A Case Study of the Real Estate Sector. A Research for a Higher Studies Diploma. National School of Public Management. Morocco, Rabat.
13. Fatma, Rabhi & Rima, Rizqi Tawous (2017). The Legal Status of the Real Estate Promoter under the Provisions of Law No. 11 – 04. MA Dissertation submitted to College of Law & Political Sciences, Algeria. P. 14.
14. Ghargan, M.M. Mithaq Talib (2010). Contractor's Liability to Defective Implementation of the Contract. A research published in "The Message of Law Journal", Karbala University, Issue No. 02, Second Year, P. 214.
15. Hamid, Siddiq Awadalla Muhammad (2016). Obligations of a Labor Contract: Comparative Study. MA Dissertation submitted to College of Higher Studies, Shindi University, Sudan, P. 61.
16. Hamoush, Dr. Abdul Rahman (2012). Contractual Liability of Architects in the Moroccan and Comparative Law. A research published in the Journal of Civil Judiciary, Issue No. 05, Third Year. Morocco. PP. 263, 413.
17. Hayat, O Muhammad (2015). The Legal System of Real Estate Promotion in Algeria in Relation to the Provisions of Law No. 11-04. MA Dissertation submitted to College of Law & Political Sciences, University of Mawlood Muamari, Tesi Oso, Algeria. P. 12.
18. Hussain, Riman (2014). Contractual Liability in the Field of Real Estate Promotion As Per Law 11-04. Identification of Regulating Rules to Real Estate Promotion Activities. MA Dissertation submitted to College of Law & Political Sciences, University of Al-Haj Lakhdar Gatna, Algeria. P.96.
19. Mograni, Kamilya (2020). Incentives Granted to Private Real Estate Promoter for Investing in the Housing Sector. MA Dissertation submitted to College of Law & Political Sciences, University of Akli Muhammad Al-Haj Al-Bouri. P.44.
20. Muhriz, Ahmed (1980). Algerian Commercial Law. Volume 01, Second Edition. Algeria. P. 59.
21. Nawal, Fnaikh (2017). Real Estate Promoter as a Legal Person. A research published in the Journal of Real Estate Law & Environment. College of Law & Political Sciences. University of Muhammad Bin Ahmed Wahran. Issue No. 08. Algeria.
22. Nsaif, Dr. Hamid Latif (2016). Consulting Services Contract. Baghdad. Sabah Bookshop.
23. Rabi'a, Sabaihi (2012). Renewed Guarantees in the Sale of Real Estate on Design as per the Provisions of Law No. 11-04. University of Warqla, Works of the National Forum of Real Estate Promotion, P. 73.
24. Rafi'a, Laour Reem (2018). Sale on Design Contract in the Algerian & French Laws. Ph.D. Research submitted to College of Laws & Political Sciences. Algeria: Oran University. P. 234.
25. Salih, Dr. Basim Muhammad (1980). Commercial Law. Baghdad: Baghdad University Press.
26. Salih, Dr. Thanoun Younis & Mahdi, Ali Selman Salih (2016). Concept of Real Estate Sale on Design & its Legal Adaptation: Comparative Study. A research published in the Journal of Tikrit University, Volume 01, First Year, Issue No. 01, P. 339.
27. Shasho, Ibrahim (2010). The Contractor in Islamic Sharia. A research published in Damascus Journal for Economic & Legal Sciences. Volume 26, Issue No. 02, P. 746.
28. Yasin, Abdul Razzaq Hussain (1985). The Liability of the Architect and the Building Contractor, its Conditions, Scope of Application and the Created Guarantees: A Comparative Study in Civil Law, First Edition. Alexandria: Al-Ma'arif Foundation.
29. Zarrouq, Yousif (2017). Legal and Investment Guarantees for Performing the Job of Real Estate Promoter in Algeria. Algeria: Lamias Leghrouir Hanshala University, Volume 04, Issue No. 02, P. 782.