

Legal protection for consumers of real estate acquisitions within real estate development contracts: an analysis of the current protection and prospects for reforming the specialised legal system

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Abstract---Protecting consumers who acquire real estate within the framework of real estate development contracts is of great importance, given the growing significance of real estate development formulas and contracts in Algeria. This necessitates exploring all the guarantees provided by general and specialised legal rules for consumers in this field. It also requires us to deduce the reasons for reforming this legal system in order to identify shortcomings in the way legal rules ensure effective protection for real estate buyers within real estate development contracts. Therefore, it is important to highlight areas for reform within this system to enable the legal framework to better protect society through real estate development contracts.

Keywords---real estate buyer, real estate developer, real estate development contracts, legal protection, civil liability, criminal liability, administrative liability.

Introduction

Real estate development is one of the most important and prioritised sectors in the state's legislative and economic policy, spanning various fields. This commitment is evident in the state's regulation of the sector, which began in 1986 with the enactment of Law No. 86/07 on 4 March 1986 concerning real estate promotion. The legislator has demonstrated a desire to enhance this activity by establishing legal rules to regulate it, as well as providing suitable measures and essential elements to develop the economic and social climate that supports this sector. This commitment is reflected in the evolution of the specialised legal framework, culminating in the enactment of Law 11-04, which sets out the regulations governing real estate development activities with the aim of achieving the objectives of

How to Cite:

Berber, F. (2025). Legal protection for consumers of real estate acquisitions within real estate development contracts: an analysis of the current protection and prospects for reforming the specialised legal system. *The International Tax Journal*, 52(6), 3620–3631. Retrieved from <https://internationaltaxjournal.online/index.php/itj/article/view/352>

The International tax journal ISSN: 0097-7314 E-ISSN: 3066-2370 © 2025

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Submitted: 16 March 2025 | Revised: 27 August 2025 | Accepted: 08 November 2025

national policy for the promotion of real estate development. This law specifies the conditions that real estate development projects must meet, improves and supports their activities, and establishes basic legislation for real estate developers.

It regulates the content and elements of the professional and functional relationship between real estate developers and buyers, or consumers who acquire real estate within real estate development contracts based on investment in the field of real estate development. However, despite the advantages offered by the three types of real estate development contract — namely, the rights preservation contract, the sale contract based on designs and the lease-sale contract — this does not negate the risks inherent in relationships between parties to these contracts in all their forms. This is due to real estate professionals often exploiting their privileged positions and holding stronger negotiating power than consumers purchasing properties under real estate development contracts.

This has resulted in an imbalance of legal positions. We will analyse the manifestations and legal guarantees that can achieve balance and equivalence in these positions. This is important because consumers who acquire real estate often find themselves in an economically weak position. This is due to disparities in economic and social opportunities in the market. This makes these contracts risky for consumers, who are often victims of fraud, either by certain real estate developers or by impostors exploiting their desire for housing under favourable financial and contractual conditions.

Therefore, we ask what legal protection the Algerian legislator has guaranteed to consumers who acquire real estate within the framework of real estate development contracts. What are the motivations and content of legislative and structural reforms to the real estate development system in Algeria? The methodology adopted to answer these questions is descriptive and analytical. It is important to note that this discussion will focus directly on clarifying the content of the legal protection guaranteed by the legislator to consumers acquiring real estate, in order to encourage investment and develop national policy for projects related to real estate promotion. This is based on a legal philosophy that considers the contract to be active, enabling the realisation of the goals of both the individual and the community. This approach recognises the buyer's status as a consumer, even if the subject of consumption is not exhausted, and treats the property as a product.

First: Guarantees Specific to the Various Forms of Contracts in the Real Estate Development System:

Real estate development activities involve a range of risks that discourage many potential buyers from subscribing to the formulas outlined in Law No. 11-04, which defines the rules for regulating real estate development activities. Consequently, the Algerian legislator has surrounded the various forms of real estate development contracts with specific guarantees. These guarantees may overlap with those in consumer contracts or ordinary sales governed by general legal provisions, while also being unique to real estate development contracts. Given that the purpose of these contracts, in all their forms, is to provide the consumer acquiring real estate within the framework of real estate development contracts with suitable housing for use according to the signed contract, the legislator has emphasized the responsibility of the real estate developer to ensure guarantees for the consumer throughout all phases of the contract, from its conclusion to its execution.

1. Acquisition of the Real Estate Developer's Status as a Condition for Practising the Profession:

The Algerian legislator has enshrined this protection in Articles 4 and 12 of Law 11-04, which stipulate that a real estate developer must hold a licence and be registered with the national register of real estate developers¹. The developer must also be a professional with the necessary skills and financial capabilities to carry out their activities. According to Article 20 of Law 11-04, anyone convicted of any

¹- Law No. 11-04 of 17 February 2011 determining the rules governing real estate promotion activities (Official Gazette No. 10, 2011).

of the offences specified in the same article, such as forgery, using forged documents, fraud or issuing checks without sufficient funds, cannot practise as a real estate developer.

2. Mandatory registration in the commercial registry and enrolment in the national registry of real estate developers:

Pursuant to the provisions of Legislative Decree 93-03, real estate development activities have been established as commercial in nature, as stated in Article 3, which declares that those engaged in real estate development are considered traders². Registration in the commercial registry has several outcomes that protect consumers acquiring real estate within the framework of real estate development contracts.

2-1 Mandatory keeping of commercial books:

Commercial books are records in which traders document their business transactions. They clarify the trader's financial position and the circumstances of their trade. In the event of bankruptcy, they provide creditors with insight into previous transactions. Mandatory books include the inventory book and the journal book.

2-1-1 Subjecting the Real Estate Developer to Bankruptcy and Judicial Settlement Provisions:

Articles 215 to 230 of the amended and supplemented Commercial Law include provisions on bankruptcy and judicial settlement. Any trader who ceases payment must declare this within fifteen days in order to initiate bankruptcy or judicial settlement proceedings. In the event of the bankruptcy of a real estate developer, the beneficiaries of the real estate development system have first-class privileges and are replaced by the Guarantee and Mutual Assistance Fund³.

2-1-2 Commitment to Avoid Unfair Competition:

According to the provisions of Law 08-12, dated 25 July 2008, concerning competition, unfair competition encompasses any actions that cause harm and require compensation for the harmed party through claims of unfair competition⁴. The purpose of this law is to define the conditions for competing in the market and to monitor economic conglomerates in order to enhance economic efficiency and improve consumers' living conditions.

2-2 Mandatory registration in the National Registry of Real Estate Developers:

Under the new promotion law, prior approval from the Ministry of Housing is required to practise as a real estate developer. Any violation of these mandatory legal provisions results in penalties, as explicitly stated in Article 77 of the same law. According to Article 243 of the amended and supplemented Penal Code⁵, anyone practising as a real estate developer without approval shall be punished for using a title related to a legally regulated profession or an official certificate, or for claiming a title defined by public authority without fulfilling the imposed conditions.

3. Financial capacity of the real estate developer:

Applicants for approval to practise as real estate developers must demonstrate that they have sufficient financial resources to carry out their real estate projects, whether they are natural or legal persons⁶. This

²- Legislative Decree No. 93-03, dated 01/03/1993, concerning real estate activities (Official Gazette No. 14, 1993).

³- Article 58 of Law No. 11-04, dated 17/02/2011, determining the rules governing real estate promotion activities (Official Gazette No. 10, 2011).

⁴- Sihem Maskir, Sale of Property Based on Designs, Master's Thesis, Real Estate Specialisation, Faculty of Law, University of Blida, 2005/2006, p. 32.

⁵- Law No. 66-156, dated 08/06/1966, containing the Penal Code, as amended and supplemented.

⁶- Article 6 of Executive Decree No. 12-84, dated 20/02/2012, determining the conditions for granting accreditation to practise as a real estate promoter and the methods for maintaining the national register of real estate promoters. This was published in Official Gazette No. 11 on 26/02/2012 and was amended and supplemented by Executive Decree No. 19-243, dated 08/09/2019 and published in Official Gazette No. 55 on 15/09/2019.

is intended to prevent unqualified individuals from entering the profession and to avoid potential issues related to project financing.

Article 6 of Executive Decree 12-84, as amended, stipulates that applicants for approval (i.e. real estate developers) must prove they have sufficient financial resources to complete their development project(s). This requirement is essential for practising this activity. According to the provisions of the joint ministerial decision, the legislator has mandated that applicants submit a sworn declaration attesting to their ability to mobilise sufficient financial resources for their project(s) before commencing work, in order to validate these resources⁷.

Financial capacity is defined in Article 2 of the aforementioned joint ministerial decision as the sum of:

- the developer's own financial resources;
- Bank loans obtained by the developer;
- Payments made by buyers for acquiring real estate under the sale contract based on designs.

This raises questions about the effectiveness of submitting a sworn declaration of the developer's financial capabilities, especially since most issues arising from this activity primarily stem from its financing. This financing ensures the continuity of projects to be executed by the developer and allows them to deliver these projects, thus fulfilling their professional and contractual obligations towards buyers.

The legislator has included a model sworn declaration in the aforementioned joint ministerial decision, in which the real estate developer declares their commitment to providing sufficient financial resources to complete their project(s). This declaration is subject to the penalties stipulated by the legal and administrative provisions in this area.

4. Obtaining insurance from the Guarantee and Mutual Assistance Fund:

To enhance protection for subscribers, the legislator has mandated that, as part of their professional duties, real estate developers must register with the Guarantee and Mutual Assistance Fund, as stipulated in Article 55 of Law 11-04. The Fund is responsible for overseeing the guarantees and insurance obligations assumed by the real estate developer upon registration.

According to Article 54 of the same law, which sets out the rules for real estate promotion, the fund guarantees repayment of advance payments made by subscribers. It also ensures that construction is completed according to the payments made by subscribers if the real estate developer halts construction. Furthermore, it plays a role in covering the broader professional and technical obligations of the real estate developer, as set out in Article 50 of Law 04-11.

5. Formality and Registration in Real Estate Development Contracts:

The Algerian legislator's stance on the necessity of formal contracts in real estate was made clear with the issuance of Ordinance 70-91⁸ on 15 December 1970, which included the Law on Notarisation and came into effect on 1 January 1971. This law mandated formal documentation for real estate contracts, stipulating that all real estate transactions must be executed in writing under penalty of nullity. Article 12 states: 'In addition to contracts that the law requires to be in formal form, contracts involving the transfer of real estate or real rights, commercial or industrial premises, or agricultural or commercial lease contracts, must, under penalty of nullity, be drafted in formal form with payment made to the public officer who drafted the contract.'

This provision subsequently offered special protection to all real estate transactions, including those related to real estate development. These provisions were reinforced by the Civil Code issued under

⁷- Article 1 of the Joint Ministerial Decision of 06/12/2012 concerning proof of sufficient financial resources to acquire the status of a real estate promoter (Official Gazette No. 2, published on 13/01/2013).

⁸- Order 91-07, dated 15/12/1970, concerning the organisation of documentation (Official Gazette No. 107, 1970).

Ordinance 75/58⁹ on 26 September 1975, particularly Article 71, which concerns promises to sell real estate and requires the parties to adhere to the legally prescribed formalities. References in the Civil Code to applicable laws also indicate that the legislator considers formality to be a fundamental condition for the validity of these transactions. This is further reinforced by Article 793 of the Civil Code, which stipulates that formalities must be adhered to, particularly with regard to the registration process for the transfer of real estate ownership.

The amendment to Article 324 bis 1¹⁰ of the Civil Code explicitly reaffirmed the necessity of formal documentation for any contract involving the transfer, modification, creation or extinction of real estate ownership rights, as well as all matters relating to original and accessory property rights. This must be evidenced by a document prepared by a public official, public officer or person performing a public service, and non-compliance is subject to absolute nullity.

In this context, formality serves as a means to enhance legal transactions and provide robust protection for consumers in this field, given the numerous advantages it entails. These advantages can be summarised as follows:

- Formality requires the involvement of a public official, public officer or person assigned to a public service, each within their jurisdiction. This enhances the legal value and enforceability of the document, making the data contained within official documents robust and conclusive. The law also imposes a duty on public officers to provide advice and guidance to real estate buyers within the framework of real estate development contracts, thus reducing the scope for potential fraud or exploitation. Formality also ensures that documents deposited with the real estate registry are registered within the legally defined time frames.

Assigning the drafting of various official documents relating to property preservation to a public official, public officer or person responsible for public services provides complete protection for the contracting parties and third parties, particularly given the serious nature of the transaction and the relevant legislative and regulatory provisions.

- The rule of formality requires certain document drafters to receive originals of all contracts and documents for deposit, and to retain original copies, as mandated by the Notarisation Law. Furthermore, the rule of formality provides the seller and buyer with an enforceable document for registration, eliminating the need for a court order.

However, the exception to this rule in our area of research is embedded in the provisions of Law 86/07¹¹ concerning real estate promotion. Article 4 of this law exempts certain real estate development contracts from the formal requirements stipulated in Articles 12 of Ordinance 70-91 and 324 bis 1 of the Civil Code. This is known as the 'Rights Preservation Contract', whereby the preliminary contract is drafted as a private document and is subject to registration. If the final sale occurs, it must be in formal form as required by Article 38 of the same law.'

This exception was swiftly rectified, however, when the aforementioned law was repealed by Legislative Decree 93-03 concerning real estate activities, which stipulated that real estate development contracts must be drawn up in a formal manner before a notary.

6. Registration as a Guarantee for Protecting the Consumer Acquiring Real Estate in Real Estate Development Contracts:

⁹- Order 75-58, dated 26/09/1975 and containing the amended and supplemented Civil Code, published in the Official Gazette No. 78, 1975.

¹⁰- Law No. 88-14, dated 3 May 1988, amending and supplementing the Civil Code.

¹¹- Law No. 86-07, dated 04/03/1986, concerning real estate promotion, Official Gazette No. 10, 1986.

The Algerian legislator did not limit itself to the aforementioned principle of formality in the transfer of ownership and real estate rights. Instead, it added a second essential condition: registration as a necessary procedure, without which no contract establishing this ownership or any other real property right can take effect. This is affirmed in Ordinance 75-74¹², which concerns the preparation of the general land survey and the establishment of the real estate registry. It states that any ownership or other real property right relating to a property shall have no legal effect for the parties involved or against third parties unless it is registered in the real estate registry.

In this manner, contracts for real estate development that aim to create real property rights will have no effect, even between the developer and the buyer, until they are published. According to Article 793 of the Civil Code, ownership and other real rights in real estate do not transfer, whether between the contracting parties or in favour of third parties, unless the procedures prescribed by law are followed, especially those relating to the management of the real estate registry. Furthermore, Article 165 of the same law stipulates that the obligation to transfer ownership or any other real right, where the subject of the obligation is a 'specific' thing owned by the obligor, must consider the provisions related to registration.

From these provisions, it can be inferred that the transfer of ownership and other real rights resulting from real estate development contracts does not occur until the contract is registered and published at the land registry. Therefore, formality alone does not substitute for registration, whether between the contracting parties or third parties. Failure to register transactions that acquire real estate ownership means that the effects of these transactions cannot be realised, which provides another guarantee for consumers acquiring real estate within the framework of real estate development contracts.

Second: Legal Protection for Consumers Acquiring Real Estate in Real Estate Development Contracts:

This section of the research discusses the guarantees provided by the specialised legal framework and related legal provisions for consumers in the field of real estate development. This is done by examining the three forms of contracts available under the real estate development system in Algeria.

1. Civil protection for the consumer (real estate buyer) in real estate development contracts:

To enhance and strengthen the legal protection granted to consumers acquiring real estate, the general legal system and the relevant legal framework offer a range of guarantees to consumers of property developed under real estate development contracts. These guarantees are the practical result of obligations imposed on the real estate developer.

1.1 Guarantee of Contractual Certainty:

As real estate development contracts are considered consumer contracts, the Algerian commercial legislator has ensured that decisions made by consumers, and particularly by real estate buyers, are based on full knowledge, thereby guaranteeing genuine choices that reflect informed consent.

This knowledge is based on the professional obligation of the real estate developer to inform the consumer of all relevant information relating to the property covered by the real estate development contract. This can be achieved by the developer providing all the necessary information to create a genuine database.

Article 47, paragraphs four and five, of Law No. 11-04 on the organisation of real estate development states that developers must not engage in false advertising or exploit the buyer's trust in any way. Furthermore, the developer must ensure the accuracy of the data and information in documents,

¹²- Order No. 75-74, dated 18/11/1975, concerning the preparation of the general survey and the establishment of the land register (Official Gazette No. 92, 1975).

decisions and contracts presented for the purposes of the activity. This enhances the developer's commercial relationships with future buyers, leading to the genuine protection of consumer interests, building trust and contributing to the revitalisation of the real estate development market.

1.2 Guarantee of completion and compliance with contractual specifications within agreed timelines:

This is stipulated in Article 17 of Law 11-04 on the organisation of real estate development. It states that the real estate developer is responsible for coordinating all operations relating to studies, research, financing and construction of the real estate project. This primary obligation towards consumers acquiring real estate under real estate development contracts is accompanied by several subsidiary obligations. The most significant of these include:

1.3 Guarantee of compliance with construction regulations:

This obligation falls on the developer in relation to the consumer within one of the forms of real estate development contracts, making it a guarantee for the subscriber. According to Article 11 of Law 11-04, the legislator has imposed that the developer's projects must comply with urban planning and development tools and/or regulations¹³, as specified in the Urban Planning Law No. 90-29 provisions, as amended. This implies that real estate projects must follow the specific guidance outlined in the mandatory urban planning regulations, as well as complying with regulatory and legislative provisions concerning the prevention of major hazards and the management of natural and industrial disasters. Administrative permits related to urban planning contracts are the executive mechanisms for urban planning tools concerning real estate development projects.

1.4 Guarantee against hidden defects:

This refers to the developer's guarantee against hidden defects, which are defects that render the property sold under real estate development contracts unfit for its intended use, or make it suboptimal¹⁴. Had the buyer been aware of such defects, they would either not have entered into the purchase contract, or would have sought to establish it under different terms, particularly with regard to the price.

However, the theory of hidden defects cannot be overlooked in real estate development contracts, as certain conditions outlined in general law must be met. These conditions determine whether a defect is eligible for warranty protection. According to Article 379 of the Algerian Civil Code, the seller must provide a warranty if the property sold does not have the guaranteed qualities at the time of delivery to the buyer, or if it has a defect that reduces its value or usability for the intended purpose specified in the sale or real estate development contract, or for its intended use.

Therefore, the seller is liable for these defects even if they were unaware of their existence. Accordingly, the consumer acquiring the property can pursue the developer for a warranty against hidden defects within a reasonable timeframe calculated from when they take possession of the property subject to one of the real estate development contracts, provided they inspect the property with ordinary care in accordance with the provisions set out in Article 380 of the Algerian Civil Code¹⁵.

¹³- Law No. 90-29, dated 01/12/1990, concerning planning and development (amended and supplemented by Law No. 04-05, dated 14/08/2004). Official Gazette No. 52, 1990; No. 51, 2004.

¹⁴- Article 1641 of the Civil Code states that the seller is liable for hidden defects of the sold item that render it unfit for its intended use, or diminish its use to such an extent that the buyer would not have purchased it, or would have paid a lower price, had they been aware of them.

¹⁵- Article 380 of the Algerian Civil Code states that, when receiving the sold item, the buyer or acquirer of the property subject to one of the forms of real estate promotion contracts must verify its condition according to the usual trading rules. If they discover defects, they must inform the seller promptly. If he does not do so, the sale is considered valid.

1.5 Ten-Year Guarantee:

In accordance with Article 554 of the Civil Code, the architect and contractor are jointly liable for any total or partial collapse of buildings or structures constructed by them within a period of ten years. This applies even if the collapse is due to a defect in the land. The guarantee covers any defects in the buildings and structures that threaten their integrity and safety.

However, Article 46 of Law 11-04 expands the individuals involved in this guarantee to include study offices, contractors and other parties related to the project owner by contract, who are also liable for the total or partial collapse of the building due to construction defects, including poor foundation quality. Article 30, paragraph 3 of Executive Decree No. 12-85¹⁶ affirms that during the ten-year period, the real estate developer bears joint responsibility with study offices, contractors, partners and any other interveners in the event of total or partial collapse due to construction defects, including poor foundation quality.

1.6 Guarantee of proper functioning of building equipment:

Article 44 of Law No. 11-04 provides another guarantee, tied to the guarantee of completion and compliance with contractual specifications within the agreed timeframe mentioned in the previous paragraph. This pertains to the guarantee of the proper functioning of the building's equipment. According to the text of the aforementioned article, the legislator has set deadlines for carrying out necessary works to repair construction defects and ensure the proper functioning of building elements, in accordance with the contractual conditions specified in Article 26 of Law 11-04¹⁷.

This guarantee only covers damages relating to equipment elements, making it less comprehensive than other legal protections granted to consumers purchasing property. For instance, it is less extensive than the guarantee of proper completion, as it only applies to elements of the equipment that can be detached from the building, such as doors, lifts and windows¹⁸. The real estate developer is responsible for this guarantee towards the property buyer, and must repair any ineffective equipment elements, even if this requires recourse to the contractor or engineer, who may not be held liable towards the property buyer.

1.7 Guarantee of Management of Common Property:

The legislator has mandated that the real estate developer prepare a system of common ownership. According to Article 38 of the Law on Real Estate Development Activities, when drafting any form of real estate development contract, the developer is required to include the system of common ownership — when applicable — along with all details pertaining to its content, as well as the financial and material means for its management. This system must be provided to every consumer or buyer of a real estate development contract upon conclusion of the contract.

The Algerian legislator has also mandated that the real estate developer manage and administer these properties for two years after handing over the constructed property to the buyer¹⁹. During this time, the developer must work towards delivering this management. Specific regulations for this management have been issued by the legislator under Executive Decree 14-99, which includes a model for the system of common ownership. Article 5 of this decree states that²⁰, in addition to the above, the real estate developer must prepare and establish the means and mechanisms for managing the real estate intended for transfer, and must strive to ensure management of the property for two years from the sale of the last part of the relevant building.

¹⁶- Article 44 of Law 11-04, dated 17/02/2001, determines the rules governing real estate promotion activities. Previous reference.

¹⁷- Article 44 of Law 11-04, dated 17/02/2001, determines the rules governing real estate promotion activities. Previous reference.

¹⁸- Sihem Maskir, Sale of Property Based on Designs, Master's Thesis, previous reference, pp. 93–94.

¹⁹- Articles 60 and 62 of Law 11-04 dated 17 February 2011 determining the rules governing real estate promotion activities (Official Gazette No. 10 published on 06/03/2011).

²⁰- Executive Decree No. 14-99, dated 4 March 2014, determining the model for the system of joint ownership applicable in the field of real estate promotion.

2. Criminal protection established for consumers acquiring real estate under real estate development contracts:

Law 11-04, which organises real estate development, has introduced criminal penalties for violations of legislation and regulations concerning real estate development. Any real estate developer who accepts or requests an advance, deposit, subscription or commercial bond before signing a real estate development contract faces imprisonment for two to 24 months and a fine ranging from 200,000 to two million Algerian dinars.

The same penalties apply to any real estate developer who is not registered with the Guarantee and Mutual Assistance Fund. Furthermore, any developer who fails to provide the subscriber with all the information and data necessary to understand the real estate development contract, as prescribed by Law 11-04 — especially Article 30 regarding ownership of the real estate, property deed number, references for related contracts and permits, planning certificates, network information, etc. — will be subject to imprisonment for two to five years and a fine ranging from 200,000 to two million Algerian dinars.

3. Administrative protection for consumers acquiring real estate under real estate development contracts:

The administrative protection established by the legislator for consumers acquiring real estate under real estate development contracts is linked to the permanent or temporary revocation of the licence to carry out real estate development activities. This is in response to breaches of duties and obligations that constitute violations and serve as guarantees for consumers in this area. The revocation of the licence to practise real estate development activities, whether permanent or temporary, due to the intentional non-fulfilment of obligations assigned to the developer, serves as one of the guarantees of administrative protection for consumers acquiring real estate under these contracts. This implies that the developer has deliberately neglected these obligations.

Most of these violations relate to breaches of contractual obligations owed by the developer to the subscriber, resulting in a legal penalty. Consequently, the licence holder, i.e. the developer, may face permanent revocation of their licence, as stipulated in Article 64 of Law 04/11, which defines the rules relating to real estate promotion.

Furthermore, the penalty of permanent revocation or cancellation of the licence to practise may be imposed in addition to other penalties resulting from judicial rulings that convict the developer of specific criminal acts, such as fraud, tax evasion or violations of certain provisions of competition law. As previously mentioned, this penalty is considered additional by law and thus does not require a judicial ruling to be applied, as it depends on the original penalty imposed on the developer.

A licence may also be officially revoked if the licence holder is subject to judicial liquidation, as specified in Article 64 of Law No. 04/11 on real estate promotion. If the licence holder is undergoing judicial liquidation following insolvency or bankruptcy and a judgment is issued to liquidate their assets, their licence will be officially revoked. Article 18 of Law No. 23/06, dated 20 December 2006, which amends the Penal Code²¹, states in its second paragraph regarding penalties applied to legal entities that ‘one or more of the following additional penalties shall apply: ...prohibition from practising a professional or social activity, either directly or indirectly, permanently or for a period not exceeding five years...’

Third: reasons for reforming the real estate development law.

Reform of the legal framework governing real estate development in Algeria should consider the needs of consumers acquiring property under development contracts. The reform should aim to provide additional guarantees to ensure legal security in practice. While this aspect is an integral part of the

²¹ Article 18 of Law No. 06-23, dated 20 September 2006, amending Order No. 156/66, dated June 1966, containing the Penal Code.

motives for reform in this area, the approach taken should lead to comprehensive, integrated reform of Algeria's legal framework for real estate development. This begins with providing developers with guarantees to enable them to fulfil their obligations, recognising that they are investors with full rights and should be considered on the same level as other investment sectors.

Reforming the legal system in relation to real estate development must take into account the challenges faced by developers, as these directly affect consumers acquiring property under these contracts. The most important of these reasons include:

Slow administrative procedures: the sluggishness and rigidity of procedures in an investment sector that should be characterised by speed, ease and digitisation.

- Underdeveloped banking system: This has negatively impacted this sensitive sector, and the National Housing Fund in its previous version did not adequately support real estate developers.

- Delay in the insurance system: This system has not kept pace with developments in the sector or the risks that should be professionally managed.

- Disparity in property values: there is an imbalance between the values of properties developed under real estate development contracts and the values offered by the free market for these properties.

- Slow and complicated administrative procedures, including technical file processing, building contracts, and the periodicity and coordination of technical inspection operations with relevant authorities.

- Lack of transparency: The accessibility and transparency of public real estate development offers compared to those of public developers in this field are lacking.

- Administrative delays in digitalisation: There is a delay in digitising the administrative procedures and services provided by the administrative and technical agencies involved in real estate development activities.

Fourth: Legislative and structural reform of the legal and institutional framework for real estate development.

Reforms to the existing legal framework to ensure the protection of consumers acquiring real estate and to revitalise the activities of real estate developers should encompass legislative, institutional and financial reforms related to real estate development in Algeria.

1. Legislative reform:

The essential first step to ensuring the protection of consumers acquiring real estate under real estate development contracts is to issue the legal framework. Any reform of the legal framework in this area, particularly as set out in Law 11-04 and its supporting regulatory texts, must take into account comparative legislation in this field, especially pioneering experiences.

It is crucial to:

Emphasise the importance of the pre-contracting phase, as this is a pivotal stage in the overall contract formation process. This phase involves defining the most significant obligations and rights of the parties to the real estate development contract, as well as addressing potential legal issues that may arise later²². These issues may be related to breaches of previously defined obligations, or to the scope and type of contractual liability that arises. This phase should include an obligation to inform in order to clarify the buyer's intentions and minimise the risk of error, exploitation or ignorance.

Propose receiving and processing proposals for real estate development projects through a digital platform.

²² Belhadj, Arab. The Legal Framework for the Pre-Contractual Phase in Light of the Algerian Civil Code (Comparative Study). Dar Wael Publishing, Algeria, 2010, p. 8.

- Digitise administrative procedures related to real estate development and provide a digital platform for uploading related documents, with automatic connectivity to the technical departments responsible for monitoring these activities.
 - Establish penalties for delays in delivery that are distinct from contractual liability.
- Consider contractual forms that take into account changes in household income.
- Enhance the rights of property owners.
- Oblige the real estate developer to provide a guarantee against visible defects, with the necessary financial conditions to realise this guarantee.

2. Structural organisation:

Any substantial legal amendments to the legal framework for protecting consumers in the field of real estate development contracts must be accompanied by adjustments to the structural organisation of the bodies and institutions ensuring the achievement of the legislator's intended goals in these amendments, in line with the developments of this legal system and its subjects. This structural organisation should start from the relevant ministry at the top, and extend down to the real estate development institutions, ensuring:

- The ministry's structures participate in coordinating with all stakeholders to develop plans and programmes for the growth and development of the real estate development sector, enhancing the quality of services and basic structures in real estate development areas.
- Functional and technical efficiency for the Supreme Council of Real Estate Developers is achieved by coordinating with scientific, financial and administrative institutions to adopt an effective strategy in this field.
- Ensuring economic efficiency for real estate developers by making investment offers and projects in this sector transparent and accessible.

3. Funding sources:

One of the most significant factors contributing to the deterioration and weakness of the real estate development sector in Algeria is the issue of financing its activities. Despite the state budget bearing a considerable share of the financial responsibility to revitalise real estate development activities for the public good, providing adequate financing remains a key consideration in any legal approach to financing issues, which are becoming increasingly complex due to the rising demand for real estate development products.

Following the government's decision to improve public financial governance and enhance transparency, the establishment of the National Housing Bank in January 2023 has provided 'mechanisms that ensure permanent financing for housing projects'.

In general, alternatives to government funding that could be subject to legislative provisions can be summarised as offering tax incentives for real estate development activities. Some financial legislators are moving towards strengthening and enhancing tax incentives. Financial policymakers view tax incentives as a less costly option than direct governmental support and direct budgets because they allow more freedom in choosing necessary actions and lead to more efficient economic outcomes. The three main objectives of tax incentives are to reduce construction, maintenance and renovation costs, exempt materials used in real estate development activities from tax and customs duties, and enhance the flow of resources to legal entities and professional institutions interested in real estate development activities.

Conclusion

When we draw conclusions and identify the factors that have a positive or negative impact on the mechanisms for protecting consumers who acquire real estate under real estate development contracts, and compare this with leading experiences in this field, we find that the protection mechanisms are

similar, while the way this protection is implemented in practice differs. These similarities do not raise any questions, as the protection mechanisms have largely become standardised and derive their provisions from international legal standards and treaties in this area.

However, the noticeable difference in the practical implementation of this protection, the extent to which consumers benefit from it and the effectiveness of enforcement, which varies from one legal framework to another, draws attention.

As indicated by the title of this conference, the anticipated reform requires real estate development to be a primary focus of reform efforts, which will have a positive impact on consumers in this sector.

Real estate development should prioritise restoring value to existing properties, which would serve the public interest and benefit professionals through financial and tax incentives and exemptions. Furthermore, the legal framework in this area should be redesigned and amended to place the utmost importance on improving the conditions for real estate developers and supporting them in a way that encourages them to achieve more at lower cost and within shorter timeframes, while ensuring suitable risk distribution.