

OBLIGATIONS OF THE CONDOMINIUM SYSTEM IN THE REAL ESTATE DEVELOPMENT FIELD

الالتزامات المترتبة عن نظام الملكية المشتركة في مجال الترقية العقارية

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abstract:

The preparation of Condominium System in the field of real estate promotion is carried out in accordance with Law 11-04 and Executive Decree 14-99, and this system entails obligations for the real estate Promoter and others for the acquirers, but there are legal difficulties and problems that prevent its preparation in the manner imposed by law, and others related to non-implementation The parties to their obligations, which imposes the intervention of the legislator to put an end to these problems in order to reduce potential conflicts, especially the problem of parking lots that are not divided into shares, as well as to withdraw the issue of the prior approval of the acquirers of Condominium System because it is impossible to apply it, and to reach fair solutions between the group of acquirers regarding the issue of burden distribution And the use of common parts.

Key words: Real Estate Development, Condominium System., Obligation, Promoter, Group of acquirers.

ملخص

إن إعداد نظام الملكية المشتركة في مجال الترقية العقارية يتم طبقا للقانون 11-04 والمرسوم التنفيذي 14-99، وهذا النظام يترتب عنه التزامات بالنسبة للمرقي العقاري وأخرى بالنسبة للمقتنين سواء أثناء إعداده أو بصدد تنفيذه بعد تكوين جماعة المقتنين، لكن هناك صعوبات وإشكالات منها قانونية تحول دون إعداده بالكيفية المفروضة قانونا، كما هناك صعوبات وإشكالات متعلقة بعدم تنفيذ المرقي العقاري لجماعة المقتنين لالتزاماتهم، مما يفرض تدخل المشرع لوضع حد لهذه الإشكالات تقريبا للنزاعات المحتملة، خاصة بمسألة عدم قسمة مواقف السيارات إلى حصص وبيعها للمقتنين، وكذا التراجع عن مسألة الموافقة المسبقة للمقتنين إلى نظام الملكية المشتركة لاستحالة تطبيقها، والتوصل إلى حلول عادلة بين جماعة المقتنين فيما يخص مسألة توزيع الأعباء واستعمال الأجزاء المشتركة.

الكلمات المفتاحية: الترقية العقارية، نظام الملكية المشتركة، الالتزامات، المرقي العقاري، جماعة المفتنين.

Introduction

The physical nature of collective data and communities in the field of real estate development imposed submission to the condominium system because the latter has been divided into; private property known as the private parts, and condominium known as the common parts, among the group of co-owners in the buildings.

To set the legal framework, the Algerian Law No. 11-04 of February 17th, 2011 was issued, relating to the establishment of rules that regulate the activity of real estate development, in which the subject of condominium is dedicated in some articles. Later on, the executive decree No. 14-99 of March 04th, 2014 was issued, relating to the definition of the condominium system model applied in the field of real estate development. The Algerian legislator decided, according to Article 38 in the last two paragraphs, the obligatory delivery of the latter model to each buyer during the signing of the contract, and according to Article 61 of the same law, obliged the real estate developer to prepare a condominium system and to indicate the legal, technical and financial data related to it, and the burdens and duties that falls on the buyers. In addition, the Algerian legislator required the real estate promoter to establish the necessary shops for the management of collective properties. He also set out a severe penalty against every real estate promoter who does not implement the content of Articles 61 and 38 of the same law, which is represented in exposing him to penal sanctions, as stipulated in Article 72, with a fine ranging from 200.000 to 2.000.000 DZD.

These legal texts regulating condominium in the field of real estate development are considered a qualitative leap achieved by the Algerian legislator in the field of real estate development by dedicating special importance for condominium in other fields or other collective construction formulas, and defining a specific model for the real estate developer to follow in its preparation, as it is obligatory to the notary who must follow it in concluding condominium system contracts.

However, this system faces difficulties in the implementation, whether related to the real estate promoter not implementing the obligations imposed on him,

Or related to the group of co-owners not implementing their obligations, or for reasons related to the difficulty of applying some legal texts

realistically and practically. In order to discuss this problem, it is necessary to address the obligations of the two parties in the field of condominium, and the difficulties associated with it in accordance with Law 11-04 and the executive decree No. 14-99, taking into account the conclusions reached by the French legislator in taking advantage of the positive legal aspects in this field, and emphasizing the Algerian legislator's sole assurance of the allocation of legal provisions for condominium in the field of real estate development.

- Therefore, we divided this presentation into the following:

The first requirement

The commitment of preparing the condominium system

The condominium system applied in the field of real estate development aims at clarifying the purpose of the building or the group of buildings, defining or dividing it into sections, and defining the special parts and the conditions for their use, in addition to the distribution of the burdens that fall on the group of co-owners, and determining the rules of administration and clarifying all relevant legal, technical and financial data, this is in accordance with the model of the condominium system attached to the executive decree No. 14-99.

The real estate promoter is obliged to prepare it according to this model which was done in the official form under a notarized contract, and is subject to the formality of registration and the formality of real estate publication¹, and concluded according to reference documents deposited with the notary who issued the contract, the latter documents are as follows:

First branch: Reference documents:

- 1- The birth certificate and a copy of the identity card of the intervener.
- 2- The commercial register.
- 3- The company's incorporation contract and all the amendments contained therein in the event that the real estate promoter is a legal person.
- 4- The certificate of registration in the national list of real estate promoters issued by the Ministry of Housing, Urbanism and the City.
- 5- The accreditation of the practice of the real estate developer profession.
- 6- The certificate of affiliation with the Guarantee and Mutual Surety Fund in the real estate development is obligatory only in the case of preparing the condominium system with a descriptive table for the division of the designs.
- 7- The land ownership contract.
- 8- The land register.
- 9- The decision that includes the building permit.

10- The expert report that includes the descriptive status of the division prepared by a specialized expert.

11- Various building designs (foundations, floors, ceilings) retail plans, the location of buildings and various formations².

The condominium system shall include the following:

Second branch: Determination and description of the building division or group of buildings and their purpose:

- The determination of the exact building or group of buildings location: address, municipality, province, and the section and the ownership group must be specified for the cadastral areas.
- Identification of the building (texture, number, street, designation).
- Designation of the group of buildings to which it belongs.
- Determination of the land on which the building or the group of buildings was built (its exact location, municipality, province, area, the section and ownership group must be determined regarding the cadastral areas, if it is not cadastral or in the process of being, then the borders must be determined from the north, west, south and east.
- The origin of the property ownership: the way the real estate developer acquires the land on which the real estate funds project is established.
- In addition to the determination of the purpose of the building or group of buildings, i.e. determining its use, whether it is:
 - Residential
 - Mixed residential and commercial, or
 - Residential, professional and commercial, according to each case.
- The technical description of the building or the group of buildings regarding the floors' number and the contents of the land, the number or name of the building, the overpressure station, the Sonelgaz transformer, the parking spaces, the means of transportation and the sewage network³.
- The shares are formed according to the descriptive state of division and numbered ascendingly, and the exact designation is made for each share separately, it includes private parts designated on the basis of the section number and an undivided share belonging to each of the three categories of condominium⁴.

The undivided share of a group of common parts is determined on the basis of the proportional shares of one section, and the share of the common parts related to each section is proportional to the private area (useful or proportional) of each section in relation to the total area of the designated sections, and this share is expressed in ten parts of a thousand for the general

common parts of the first category, and in parts of a thousand for the general common parts of the first category (.../10.000), and in parts of a thousand for parts of the second and third category (.../1.000).

The (private or common) parts are formed in the division table.

* The designation of the special and common parts and their composition:

The Algerian legislator has defined the private parts under the appendix containing the model of the condominium system in the field of real estate development as “the parts that are owned by each co-owner and allocated to the latter exclusively, i.e. the shops that are included in his share (s) with all his facilities”⁵.

The legislator determined the special parts and their composition⁶ as follows:

- Slabs, tiled floors, wooden floors and all coverings in general.
- The ceilings of houses, i.e. the wooden panels and the gypsum that covers them, the moldings and decorations that can be used to decorate the ceilings, and the pieces of carpentry.
- Interior barriers and doors.
- Deck doors, private entrances, windows in the form of doors, shutters of all kinds, supports and windows barriers, balconies, balcony glass, cabins and their structures.
- Interior paint for thick and separation walls.
- Pipes, channels or internal lines designated for use in the shop only to distribute water, gas, electricity, waste water and trash.
- Devices, taps, locks and related accessories.
- Sanitary equipment for showers, bathrooms and restrooms.
- Cookware and sinks.
- Individual equipment for heating and hot water located inside the private shop.
- Wall cabinets and wardrobes.
- All interior decoration, framing, chimney racks, mirrors, paint, woodwork and boxes.
- In general, everything that is included in shops and is intended for residential use only.

The separation common parts: It means the common parts separating the co-owners who are neighbors, the barriers or walls separating the shops, except the basic walls in the building.

As for the French legislator, he defined the private parts under Article 02

of the law dated July 10th, (7th month) 1965 as follows: “The private parts are the exclusive property of every owner and his partner”⁷.

The French legislator did not address its definition and composition, leaving that to the systems of condominium. As for the common parts, the Algerian legislator defined them as “the parts that are owned jointly by all the co-owners, each according to the share belonging to each division and designated to all or many of the co-owners to use or benefit from”⁸.

And the legislator divided it into three categories according to the case: the common parts of the first category are the parts designated for the use of all co-owners, the common parts of the second category are the parts designated for the use of residents who work in one particular building, and finally the common parts of the third category which include exclusively elevators and their machines and elevator cages located in the buildings.

As for the French legislator, he dealt with the common parts according to Articles 3 and 4 of the recent law dated July 10th, 1965, and defined them as the parts designated for the use or benefit of all or many co-owners⁹.

Without interfering in their presentation and composition¹⁰. Leaving the determination to the condominium system.

Third branch: Rules of management of the building or the group of buildings

- The system of condominium includes defining the rights and duties of the co-owners of the property. They have the right to use and benefit from the private parts, provided that the rights of the co-owners in other premises are not affected, and that no work is done that endangers the building. They also have the right to use the common parts freely and according to the assigned use of the latter, without interfering with the rights of the co-owners or other users, or obstructing its use, or using it for a purpose other than the one for which it was assigned.
- The condominium system must also include how the building should be managed, and the total number of buildings established by the assembly of co-owners, along with defining its members and responsibilities. The law granted the capacity for litigation¹¹, and decree No. 99-14 also specified the manner of holding its meetings, its agenda, how it proceeds and the conditions for making decisions, and it made that by consensus of the majority, and assigned the tasks of implementing its decisions to the administrator appointed by the assembly according to the conditions stipulated in the condominium system, and also defined its missions.

The condominium system must also include defining and classifying the burdens that fall on the co-owners, and how to finance and pay it.

And after preparing the condominium system in accordance with the model of the condominium system in the field of real estate development by executive decree No. 14-99 dated March 04th, 2014, and the editing according to a notarized contract, and the subjection to the formality of registration and publication of real estate, it is compulsorily delivered to each buyer during the signing of the sale contract in application of the provisions of Article 38 of Law 11-04, last paragraph.

- What can be seen through studying the condominium model in the real estate development is that this model is linked to the descriptive state of division, and it must be edited, registered and publicized before proceeding with the sale operation by the real estate promoter.
- And according to Article 6 of executive decree No. 14-99, which require the real estate developer to prepare this system according to the specifications of the model specified in the decree, and to be subject to the formalities of registration and real estate publication under a notarized contract required from the real estate promoter, and with the approval of the representative elected or appointed by the buyers.

On one hand, the approval of the elected or appointed representative by the buyers before the preparation of this system and formalizing it is impossible to achieve, and it makes applying this aspect realistically and scientifically impossible, since the preparation and editing of the system under a notarized, registered and publicized contract is a process that practically precedes the sale operation. And at this stage, it is impossible to conclude sales contracts by the real estate promoter, whether in the two forms, sales on designs or final sales, except after the editing of the condominium system in the official form, the formation of the group of buyers and their appointment of a representative, which takes place after the selling of all the shares specified in the system.

On the other hand, the legislator did not state the matter of amending the condominium system after starting the process of selling of all or some of the shares by the real estate promoter under the sales on designs contracts, whether the shares are canceled and replaced by others, or in the case of establishing several shares or modifying them practically and technically. If the cancellation of the share and its replacement with other shares results from dividing it into new shares without affecting the rest of the shares in terms of their percentage in the common parts, whether of the first, second or third category, then the condominium system is amended without the obligatory

approval of the buyers who purchased under sales on designs contracts.

As for the case of creating new shares by increasing the number of floors or the development of new buildings, the total modification of the condominium system takes place, as it prejudices the parts of condominium in its three categories, the first, second and the third in all shares, whether they were sold under contracts on designs or not sold yet. The editing of this system amendment depends on the approval of all the acquirers who have purchased shares in the real estate project, and this approval is reflected in their signature on the amending contract and their acceptance of this amendment before the notary, otherwise the real estate promoter cannot make this amendment.

As for the case of amending the composition of the shares, the amendment does not affect the rights of the co-acquirers, and it takes place without their mandatory consent.

The second requirement

The obligation to guarantee the management of real estate properties for a period of two years

Articles 60 and 61 of law 14-99 stipulate the obligation of the real estate promoter to prepare and place the devices and equipment for managing real estate properties proposed for sale and the doorman's residence for the common parts, this obligation is confirmed by Article 04 of executive decree 14-99. According to article 62 of law No. 11-04 and article 5 of executive decree 14-99, and article 32 of executive decree No. 12-85 of February 20th, 2012 relating the model book of conditions that defines the professional obligations and responsibilities of the real estate promoter¹², the real estate developer is also bound to manage the real estate properties and ensure its management for a period of two years, starting from the date of selling the last part of the assigned building, and working to transfer this management to the devices set up or appointed by the acquirers¹³.

First branch: The real estate promoter's obligation to guarantee the management of real estate properties for a period of two years

According to the general rules of civil law, the most important obligation of the seller in the sales contract is the obligation to deliver the sold thing to the buyer in its condition at the time of sale, meaning that he has to keep the sold thing until it is delivered, and this obligation ends once it is delivered¹⁴.

In addition, the buyer must bear the costs of the sold thing from the day of the sale¹⁵, at this point, the seller's role ends, except regarding his obligation to

guarantee the hidden defects and ensure non-exposure and failure. In the sales contract within the framework of the real estate development, he is responsible for the ten-year warranty¹⁶. However, contrary to these general rules, the Algerian legislator requires the real estate developer to guarantee the management of the sold real estate property for a period of two years starting from the date of selling the last part of this real estate property. Despite the delivery to the buyers, knowing that this delivery of the share that they purchased leads us to address the following two cases:

- In the case of the final sale contract, here the delivery takes place in accordance with the general rules, during the signing of the sale contract. After delivering the price to the seller, he will directly hand over the keys of the sold property to the buyer¹⁷.

- In the case of a sale contract on designs, here the delivery process takes place in accordance with the provisions of Article 34 of Law 11-04 in the second paragraph, which includes as follows: “The sales contract on the designs mentioned in the previous paragraph is considered in presence in the same documentation office, in order to inspect the actual possession of An office party and delivery of the building completed by the real estate promoter in accordance with the contractual obligations”.

In practice, in order to implement the text of this article, the process of handing over the share sold by the real estate developer to the acquirer takes place according to a report that is passed in the form of an official contract, the minutes of possession and the handover of the keys of the apartment, the commercial store, or the place where the car is parked. After the real estate promoter prepares a certificate of conformity proving that the real estate promoter has built the real estate property in accordance with the designs and in accordance with the building license and his respect for all valid laws, to be subjected to the formality of registration without the formality of the publication because Law 04-11 does not subject this minutes to the formality of the publication.

First: Validity of the obligation to guarantee the management of real estate:

The Algerian legislator obligated the real estate promoter to guarantee the management of real estate property for a period of two years, starting from the sale of the last part of the concerned building¹⁸

- However, it was more appropriate for the Algerian legislator to differentiate between the two cases of sale on the basis of which the real estate promoter built the sale of real estate.

- If the sale was made through a final sale, then here this obligation begins from the date of selling the last part of the building specified in the sale process.
- If the sale was done by selling on the designs, then here the real estate promoter can sell all the shares in the real estate property until the last part of it before completing its completion and before handing it over to the acquirers, here even the field of application of the rules or system of joint ownership has not yet entered into force and accordingly I cannot manage the property according to the condominium system, and the project has not been realized nor received, and accordingly, it was more appropriate to say that the real estate promoter's commitment to ensuring the management of real estate begins after selling all the parts even the last part and after handing over the shares to the acquirers according to the minutes of possession.

Second: The content of the commitment to ensure the management and management of real estate:

The Algerian legislator, according to Law 04-11 and Executive Decree 9-1-, gave the partners in real estate a period of two years to arrange their affairs in order to manage and manage their condominium by forming an association with corporate body that acquires civil body once it is approved, and appointing the disposer for a period of two years, subject to renewal, according to the conditions stipulated in the condominium system.

And the law obligates the real estate promoter to ensure the management of real estate, so it is his responsibility to guarantee the temporary management for a period of two years, until the call for the first meeting of the General Assembly in order to establish the bodies regulating the condominium¹⁹.

Here, the real estate promoter or any person appointed by (20), through the period of transitional management, shall replace all the joint management bodies, and he shall undertake to perform the same role and tasks assigned and entrusted with disposal, and as specified in the condominium system, he shall start applying the condominium system, working on a commitment of all its provisions, apply penalties and notify the association of all violations committed by the partners to take the necessary measures, implement the decisions of the General Assembly, carry out the necessary works, manage the building or a group of buildings and preserve it, maintain it and appoint guards on it, intervene to impose calm employing cleaners and gardeners in green spaces, play areas for children, employing guards, employing those charged with the maintenance of common real estate and determining their work conditions in accordance with the laws in force and in accordance with employment contracts, keeping books for the management of accountants, insuring the building against risks²⁰.

Second branch: Transfer of Administration and Transitional Management:

At the end of the transitional management of the condominium, the real estate promoter's obligation to guarantee the management is terminated, but he has to transfer this obligation, i.e transfer the administration and management permanently to the body entrusted with that²¹, which is the association of partners who are summoned in advance to convene the meeting of the general assembly that had appointed in its first meeting an administrator and determined his wage and the estimated budget for the fiscal and commercial year.

The real estate developer, after delivery from the administrator via a letter, must transfer all the financial accounts that were prepared in accordance with the regulation, transfer all documents and papers related to the management of the building, and transfer a record of that including the handover of tasks and management, signed by the real estate promoter at the association of the administrator appointed by a the partners in property²² .

In the case of noticing or identifying any significant shortcomings or monitoring closed errors, whether in the accounting financial accounts or the real estate promoter's negligence in his duties, the administrator may express reservations about the task of the real estate promoter in the management and administration and request to reform it before a competent judicial authority.

The second topic Obligations of co-ownership partners

The Algerian legislator intervened by virtue of Executive Decree 1994 of March 4, 2014 by defining the duties of the partners in condominium, and in general, they must respect the easements that burden the building, the shop, or the real estate group, whether these easements result from title deeds or construction, or from the natural position of private shops By the condominium system or by the descriptive case of division, they are also responsible for disturbing the usufruct, cases of negligence, and the stipulated violations, whether it was because of him personally or because of his visitors or the occupants of his share in any way²³.

Their obligations may be divided on the basis of their use of the private parts or their use of the common parts.

The First requirement Obligations arising from the use of private parts

The use of the private parts is a guaranteed right for each partner in the condominium, so he benefits from them in a manner that does not prejudice the rights of the partners in the condominium and the allocation of the building, and not to do any work that would endanger the building, so he has the right to amend or carry out all internal repairs for his private share under his responsibility and In accordance with the laws and regulations in force without endangering the durability of the building, and he must complete the works under the supervision of persons qualified to carry out this type of works in order to take all precautions that would preserve the safety of the building, and these modifications will be at his expense.

- Also, in the event that the private part owned by the partner in the joint ownership is commercial stores, the partner must commit to practicing trade that does not involve the risk of explosion or fire, or that would create anxiety, inconvenience, or smells that disturb the benefit of the residents of the building or be a source of concern for them.
- Commitment to calmness and vigilance not to disturb the calm at any time, whether by the partner personally

Or any occupant on his part or his visitors, and he is not allowed to install any engine in his private part that would disturb the calmness of the building or be a source of disturbance to the rest of the co-owners, with the exception of the silent one, under the condition that it is equipped with a system designed to not disturb the reception of televised sessions.

The co-owner is also required to use windows and balconies in the manner allocated to it, and in accordance with urban security regulations, such as not spreading clothes on windows and balconies to distort the exterior view of the building, or placing vases and plant pots in a way that watering them does not lead to the dirtiness of the exterior facade of the building, and he must install them in order to avoid falling on passers-by and neighbors, maintaining its cleanliness, and committing not to put up any banner or advertisement of any kind, except for the owners of private shares of professional and commercial use, as permitted by law and in accordance with the regulations in force.

The Second requirement

Obligations arising from the use of common parts

- The partner in the condominium may use the common parts according to what they are intended for it, and according to their allocation without interfering or obstructing the rest of the partners in the condominium and without obstructing their use, or using them for other than the purpose for which they were allocated, and he is obligated not to introduce any change

to the common parts and equipment allocated to the condominium, except with the approval of the majority of the partners in the property, as it was organized under the system condominium.

- The partner in the condominium is also required to pay the burdens of the joint ownership, which are divided into two categories:

First branch :The burdens of the first category:

They are related to the normal management of the condominium, as well as small repairs to the common parts, and these burdens are distributed in the form of equal shares between the occupants (the partners owners, occupants in whatever capacity), it is paid to the administrator according to the modalities decided by the General Assembly²⁴.

These burdens include the following:

The salary assigned to the administrator, as well as the expenses necessary to run the management of the building, the wages of employees and doormen who can be employed by the administrator, and all related costs.

- Electricity and water bills for the common areas, general meter expenses.
- Expenses of maintaining and restoring the equipment of the overpressure station.
- Procurement of materials and containers required for the maintenance of entry gates, stairs, cages and surfaces.
- Expenses and costs of the collective heating process and its accessories.
- Expenses for temporary maintenance and repair of lighting for entrances, surfaces, all shops and parts of common use.
- Payment of insurance amounts that cover work accidents and accidents caused by the building management employees to others.

And all the expenses required by the small repairs in the common parts, the company must pay these burdens to the administrator according to the methods determined by the association.

Second branch: Burdens of the second category:

This category of burdens includes the following:

Restoration expenses of all kinds related to massive walls, with the exception of small repairs.

Related to the walls inside apartments and shops, the external ceiling, roof, facades, balconies, compartments, chimney heads, water, gas and electricity channels, with the exception of the designated parts of these facilities.

For exclusive and private use in every apartment or store, pipes, rainwater drainage, waste water, and gutters for discharging dirt, except for the parts designated for exclusive and private use in every apartment or store. dedicated to serving the building exclusively.

The works or repairs that are required by the filling in the canals, and which cannot be determined.

- Expenses of cladding the facades, including the expenses of painting the handrails, the beams supporting the balconies, the windows, the works, the external window panels, and the curtains of each apartment, although these things are private property.
- Maintenance expenses and restoration of pipes and building waste bins.
- Expenses for maintaining and arranging shops included in the common areas, including paint expenses.
- Expenses of restoring the lighting facilities in the common parts.
- Maintenance and replacement costs for ducts for the main parts, with the exception of private ducts in group buildings.
- Dismantling elevators and heating devices and repairing all or part of them, as well as following them.

Possible taxes and fees, whatever their form, to which all common objects and parts of the real estate complex will be subject.

Insurance amounts against fire, accidents, civil liability, water damage and other risks.

- Elevators, which includes maintenance and repair expenses for all or part of the elevators, in addition to their accessories.

Engine power consumption and all expenses related to its operation.

Third branch: Method of payment of charges:

The appendix containing the form of condominium system in Executive Decree 14-99 includes how to pay the charges that fall on the shoulders of the property partners as follows:

Burdens are paid through the property partners' contribution according to the nature of the works²⁵ either within the framework of an annual budget or by payment calculated on the basis of a statement when it comes to works that have been carried out for the necessity of maintenance of the common property.

In order to carry out the necessary works within the framework of an annual maintenance plan, a circulating money fund is created and funded at the beginning of each fiscal year with a balance paid by each co-owner. The balance required to be paid is equal to 40% of the amount of the contribution that each co-owner must contribute to the annual maintenance plan decided by the General Assembly²⁶.

We note that the Algerian legislator, according to this system, has determined the burdens according to the nature of the works performed in the condominium property, as a criterion for determining them, leaving the matter to the general assembly of the group of partners without intervening to determine a basis or criterion for calculating the share of each partner.

As for the French legislator, he determined the issue of distributing the burdens, on the basis of the percentage of the common parts, so all condominium compulsorily participate in paying it²⁷.

Article 10, paragraph 4 of the law, by the rules requires that the system of condominium promulgated after December 31st, 2002 clarify the standards that are taken into account and the methods of calculation to determine the proportions of common parts and the distribution of burdens²⁸, and the distribution of burdens is amended with the approval of all partners in the property²⁹.

Forth branch: How to deal with the issue of failure of one of the partners to fulfill his obligation to pay the burdens of joint ownership:

We note that the Algerian legislator, according to Executive Decree -1- has granted the disposer of affairs the possibility of resorting to the method of compulsory collection against the joint owner in the event that he does not pay the amounts due for the joint ownership expenses, whether those burdens are of the first category or of the second category,

The disposer of affairs sends two warnings, accompanied by a notice of receipt, sent during the month following the specified deadline. In the event that the co-owner who defaults in payment does not respond to the disposer of affairs, the disposer of affairs may seek an execution order against him by way of a petition to be deposited with the regionally competent court whose jurisdiction is within the building or group of buildings, with its support with the file that contains Especially on the minutes of the General Assembly's decision, which determines the distribution of burdens and the two warnings notified to him.

The Algerian legislator also arranged a serious penalty for the co-owner who violated his obligations to pay the expenses of the joint ownership. The disposer was granted the right to sign a legal mortgage on the share of the partner in the event that he did not pay his debts within 3 months, and with him, all legal measures were taken in implementation through seizure and auction sale. In the event of non-response.

The Algerian legislator also decided that the absence of the partner and his non-occupation of his ownership will not relieve him of his obligation to pay the burdens due on him, nor will he be excluded from compulsory collection by the legal methods specified above.

Conclusion

The Algerian legislator has attached great importance to the condominium system in the field of real estate promotion by enacting Executive Decree 14-99 in order to avoid any future disputes over condominium and to preserve the beauty of the promotional real estate projects and to preserve their equipment, strength and solidity and to enable joint owners to benefit from the common parts in the best conditions with respect to the rights of all owners, but despite this, it must be recognized

that there are owners who shirk their obligations in the condominium, or even the failure of the real estate promoter to implement his obligations in the joint ownership, which creates problems and then disputes that may lead to a judicial claim.

Perhaps the most important of them:

- The issue or problem of the real estate promoter not dividing the parking lots and not including them as shares and selling them by the real estate promoter to some of the collectors by handing them a mere certificate on his part, which creates a problem between the collectors as they argue that these parking lots are joint property and that everyone has the right to benefit from them. It should be noted here that some real estate promoters are creating this problem in order to evade issuing contracts for the sale of parking lots, especially in contracts for the sale of designs, in order to evade the payment of the insurance imposed by the Fund.

Warranty and mutual guarantee, considering that this guarantee costs them huge amounts that cannot be recovered.

- The issue of the holders' prior approval of the condominium system prepared by the real estate promoter, imposed by the aforementioned decree, cannot be achieved realistically and practically, since the system is prepared and edited before the formation of the group of owners, so it must be reconsidered.
- The issue of the compulsory measures taken against the acquirer or co-owner who fails to implement his obligation to pay the sums of burdens related to condominium, which are considered serious measures affecting his private ownership in the building or the group of shared buildings, and which are implemented directly on the private property owned by him in the building.
- We note that the Algerian legislator has violated the general rules in compulsory execution that impose execution on movables, and in the event of lack of existence or sufficiency, moving to implementation on real estate due to the importance of the real estate, but the Algerian legislator gave the disposer of authority to sign the legal mortgage and then compulsory execution on the real estate directly, which is a dangerous procedure affecting real estate ownership. Legally sanctified private property, which necessitates a review of this procedure and finding solutions without prejudice to it, especially after proving the insolvency of the co-owner. Is it reasonable to sell his private property through the judiciary for the amounts of the burdens? The French legislator has found another solution and intervened by creating associations that list the joint properties that are going through financial problems, and then ensure the payment of the amounts owed by the insolvent joint owner after proving his insolvency.
- The issue of burdens and expenses related to elevators, is it fair to oblige the co-owner who lives on the ground floor to pay them while he does not use them at all? Especially since the condominium system did not resolve this issue, and we note that the French legislator decided to exclude the co-owner who lives on the ground floor from

Pay the burdens related to elevators in order to achieve the principle of justice.

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1 Article 6 of executive decree No. 14-99 of March 04th, 2014.

2 Appendix containing: the model of the condominium system in the field of real estate development by executive decree No. 14-99 of March 04th, 2014.

3 The appendix containing the model of the condominium system in the field of real estate

- development of executive decree No. 14-99 of March 04th, 2014
- 4 Dr. Mesker Sihem, the real estate promoter's obligations resulting from the sale of the promotional housing, PhD thesis 2015-2016, University of Frères Mentouri - Constantine - page 308.
 - 5 Dr. Mesker Sihem, the real estate developer's obligations... page 307.
 - 6 The Algerian legislator, by decree No. 14-99 of March 04th, 2014, defined the special parts and presented their composition as an example.
 - 7 Sophie Druffin Bricca. Laurence Coroline Henry. Droit Des Biens Gualino, printed in France June 2022. page 175.
 - Cyril Sabatié Copropriété Statut Gestion. Contentieux, printed in France, DELMAS edition, 2019_2020, page 19.
 - 8 The appendix containing the condominium system in the field of real estate development of the executive decree No. 99-14 of March 04th, 2014
 - 9 Cyril Sabatié. Copropriété Statut Gestion. Contentieux, printed in France, DELMAS edition, 2019_2020, page 26
 - 10 Richard Scaglione. Grand Guide pratique de la copropriété, Maxima edition. Printed in France. May 2017 page 47.
 - 11 The appendix containing the model of the condominium system in the field of real estate development of executive decree No. 14-99 of March 04th, 2014.
 - 12 Official journal No. 11 of 26-02-2012.
 - 13 Dr. Mesker Sihem, the real estate promoter's obligations resulting from the sale of the promotional housing, PhD thesis 2015-2016, University of Frères Mentouri - Constantine - page 311.
 - 14 Text of Article 364 of the amended and supplemented Algerian Civil Code
 - 15 Text of Article 389 of the amended and supplemented Algerian Civil Code
 - 16 The text of Article 26 of Law 11-04, the last paragraph.
 - 17 In addition to the provisions of Article 26 of Law 04-11, which states the following: "A sale contract of a built property is every official contract that transfers, according to the real estate promoter, in exchange for payment of the price, by the acquirer, the full and complete ownership of the built property that is the subject of the deal."
 - 18 Text of Article 62, first paragraph of Law 04-11
 - 19 Appendix containing the condominium model of Executive Decree 14-99
 - 20 Appendix containing the model of the condominium system of Executive Decree 14-99.
 - 21 Article 32 of the model terms of reference that defines the professional obligations and responsibilities of the real estate promoter attached to Executive Decree No. 122-28 of February 20th, 2012
 - 22 The appendix containing the form of the condominium system of Executive Decree 14-99
 - 23 The appendix containing the form of the condominium system of Executive Decree 14-99.
 - 24 The appendix containing the condominium system model of Executive Decree 14-99.
 - 25 The appendix containing the condominium system model of Executive Decree-14-99
 - 26 The appendix containing the condominium system model of Executive Decree-14-99.
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 - 28 Richard Scaglione. Grand Practical Guide to the Maxima Edition Condominium. Printed in France. May 2017 page 259.
 - 29 Sophie Druffin Bricca. Laurence Coroline Henry. Droit Des Biens Gualino printed in France June 2022. page 182.