Legal Protection of the Buyer in Off-Plan Real Estate Sales: A Comparative Analytical Study

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DOI: https://doi.org/10.31918/twejer.2584ELI.23

Published:2/11/2025

Abstract

This article examines the legal protection of the buyer in off-plan real estate sales. Off-plan selling is a legal and commercial term that refers to the process of selling real estate units before their construction is completed. In other words, properties are sold based on plans and designs, meaning the project exists only on paper at the time of sale. This practice is common in many developed countries, as it allows buyers to purchase properties that are yet to be built, often with only the design or map of the future building available for viewing. In off-plan sales, transactions are based on pre-existing plans and designs of the construction project. Specific contracts are established between the owner of the residential project and the buyer, wherein the buyer pays a portion of the total amount as a down payment upon signing the contract in the initial stage. The remaining payments are scheduled during certain future stages of construction, corresponding to the development progress of the residential unit. In return, the developer commits to delivering the real estate unit according to the agreed-upon specifications. While off-plan property purchases can offer benefits such as lower prices and the opportunity for buyers to customize certain aspects of their future homes, they also come with risks. These include potential delays in construction, changes in market conditions affecting property values, and the possibility that the finished product may not meet the buyer's expectations. Therefore, it's essential for buyers to conduct thorough due diligence and ensure that contracts clearly outline the obligations of the developer, payment schedules, and remedies in case of disputes.

Keyword: *Off-Plan, Sale, Construction Project, Property, Real Estate.*

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1. Introduction

The buyer benefits from an effective and optimal method that enables them to acquire a housing unit in the future according to their specifications without being required to pay the full price upfront, as would be the case when purchasing a ready-made property. Instead, the buyer pays in installments based on the progress of construction carried out by the investor. On the other hand, due to the high cost of construction, the seller faces significant financial requirements that may be difficult to meet, even with bank subsidies. This method facilitates real estate transactions by reducing the immediate financial burden on both buyers and sellers.

From the state's perspective, this approach offers a solution to the housing crisis by involving those in need of housing in financing its construction. This, in turn,

benefits all parties involved. As a result, the state has supported the expansion of this practice—commonly referred to as "selling real estate off-plan"—due to the advantages it provides for buyers, sellers, and the government alike.

The activity of selling and leasing real estate projects off-plan involves receiving payments from buyers or tenants. Additionally, it includes the sale and leasing of government-owned real estate projects in accordance with their designated purpose and within the framework of existing regulations.

Off-plan sale is a legal and commercial term that refers to the process of selling real estate units—such as apartments, villas, or residential and commercial projects—before their construction is completed or, in some cases, before construction has even begun. In other words, the sale is based on plans and designs, meaning the project exists only on paper and has not yet been built.

Off-plan Sale typically involves purchasing a property, often an apartment, before its completion, usually at a significant discount. This practice may involve real estate buying and selling offices acquiring properties or land based on plans, or it may involve the distribution of real estate to employees according to pre-approved maps. However, in some cases, the allocation of the same property to multiple buyers can lead to legal and financial disputes. Additionally, population growth is a pressing modern issue that has long posed challenges for governments. The significant increase in population over recent centuries has

led to a growing demand for housing, further intensifying the need for sustainable urban planning and development.

Population inflation is a global phenomenon that has affected many countries, including Iraq, where the demand for housing continues to rise due to population growth. This increasing demand may lead to higher land and real estate prices, as well as a rise in rental costs. Consequently, it can create a significant opportunity for investment in the housing sector as a means of addressing the population crisis in many parts of the world.

Therefore, individuals often resort to purchasing properties before their completion as a way to find alternatives and secure safe solutions for obtaining housing units. This practice also plays a crucial role in providing financial liquidity, which helps facilitate the completion of construction projects.

This type of contract benefits not only the parties involved but also the national economy. However, relying solely on off-plan sales is insufficient unless it is regulated by sound legal frameworks. Selling properties based on plans constitutes a significant part of the solution to housing challenges, as it encourages the expansion of construction activities. From the buyer's perspective, this approach is ideal, as it allows them to acquire a property in the future without being required to pay the full price upfront or in a single installment. Meanwhile, for the seller, it serves as an effective method to finance the project through the payments received from buyers over time.

The sale of housing through off-plan construction holds great significance, as real estate development is a major concern for governments and a key factor in economic and urban planning. This type of contract plays a crucial role in alleviating the housing crisis by enabling buyers to acquire a home before its completion in a manner that aligns with their financial capacity. A notable example is the Bismayah Residential Project, where apartments are purchased off-plan—meaning buyers secure ownership before construction is finished—by paying a portion of the price based on an agreement between both parties. To ensure the success and sustainability of this practice, it is essential to establish legal mechanisms that regulate investor activities in this sector. Additionally, safeguards must be implemented to protect buyers' interests and minimize the risks of unsafe real estate speculation, particularly in the housing market.

1.1. General Overview of Off-Plan Real Estate Sales

Off-plan real estate sales are a common practice in many developed countries. In some projects, buyers make purchases based solely on architectural designs or maps without seeing a physical model of the property. Even when a model is available, buyers may not always know the exact location of their unit within the project.

Off-plan sales involve selling real estate units—such as villas, apartments, or other properties—before construction begins or while it is still in progress. This means buyers commit to purchasing a property based on design plans rather

than a completed structure. The process relies on pre-approved architectural plans and contracts between the project owner (the investor) and the buyer. Typically, the buyer pays a percentage of the total price as a down payment upon signing the initial contract, while the remaining balance is paid in installments during specific construction phases. These payments align with the progress of the project, ensuring financial liquidity for the developer. In return, the investor or project owner is contractually obligated to deliver the real estate unit according to the agreed-upon specifications within a specified timeframe. If there are delays beyond the agreed deadline, the investor may face penalties, fines, or compensation claims from the buyer.

1.2. Reasons for Choosing This Topic

We chose this topic because Iraqi law currently lacks specific regulations governing the sale of real estate off-plan. This absence has led to numerous disputes between investors and buyers regarding construction specifications, project timelines, and installment payments. In some cases, investors have collected partial payments from buyers and then disappeared, leaving them without legal recourse. Another key reason for addressing this issue is to examine legal provisions that protect buyers and safeguard their rights. In many countries, off-plan sales are regulated by special laws designed to ensure transparency, define investor responsibilities, and prevent fraudulent practices.

Off-plan sales provide buyers with an opportunity to purchase properties at a lower price compared to their market value upon completion. However, this method carries risks, including delays in project delivery, changes in construction quality, and other unforeseen challenges. Many major cities have experienced a surge in real estate developments where properties are marketed and sold before construction begins, highlighting the rapid expansion of this sector. A critical aspect of our study is the identification and analysis of risks associated with off-plan sales. By examining issues such as project delays and quality discrepancies, we aim to explore ways to minimize these risks and establish mechanisms that better protect buyers' rights in the real estate market.

1.3. Importance of the Topic

Legal protection for buyers in off-plan sales contracts is essential, as they are often the weaker party in the agreement due to their urgent need for housing. Without proper safeguards, buyers are vulnerable to exploitation by investors who may prioritize maximizing profits over adhering to agreed-upon specifications. One major concern is the possibility of project delays caused by economic fluctuations, which could lead investors to demand additional payments from buyers beyond the original contract terms. Another risk involves fraudulent practices, such as using substandard construction materials that fail to meet required specifications. Additionally, there is the potential for investors to declare bankruptcy before completing the project, leaving buyers at risk of

financial loss. Recognizing these challenges, some countries have introduced regulations to protect buyers in off-plan sales by ensuring transparency, enforcing construction quality standards, and requiring financial guarantees from developers. Strengthening legal protections in this area is crucial to preventing fraud, minimizing risks, and ensuring that buyers receive the property they were promised within the agreed timeframe.

Given the significance of off-plan real estate sales and the hesitation of many investors to engage in this form of real estate investment—viewing it as an uncertain and high-risk venture—there is a clear need for legal clarity and safeguards. Additionally, many buyers are unfamiliar with the legal provisions governing these contracts, making them hesitant to commit to purchasing properties in this manner.

In Iraq, the absence of specific regulations governing off-plan sales exacerbates these concerns. Currently, only general provisions of the Iraqi Civil Code apply, which do not offer adequate guarantees considering the unique nature of off-plan real estate transactions. This gap in legal protection raises a critical issue: to what extent are buyers legally safeguarded in off-plan real estate sale contracts?

This study aims to examine this question by analyzing existing legal frameworks, identifying risks associated with off-plan sales, and exploring potential legal mechanisms to enhance buyer protection in Iraq's real estate market.

An off-plan sale is a real estate sales contract in which the seller commits to constructing a building according to agreed-upon specifications and delivering it to the buyer within the timeframe specified in the contract. In return, the buyer agrees to pay the sale price in installments according to the agreed payment schedule. Despite the importance of this type of contract, the Iraqi legislator—along with some other legal systems—has not yet established specific regulations governing off-plan real estate sales.

Off-plan sales have been defined as a contract in which a natural or legal person commits to constructing buildings on their land (or land they have the right to build on) for the benefit of a buyer, transferring ownership to the buyer, and delivering the property according to the agreed specifications within a specified or reasonable timeframe, in exchange for installment payments that correspond to the progress of construction or follow a predetermined schedule. Alternatively, some legal scholars define off-plan sales as a contract through which a buyer acquires ownership of a property that the seller has either not yet started building or has not yet completed at the time of contracting. In this arrangement, the seller commits to constructing the property as per agreed specifications within a set timeframe, while the buyer commits to making installment payments as scheduled.

1.4. Objective of the Study

The primary objective of this study is to examine the buyer's rights in off-plan real estate sales, particularly regarding their ability to sell the property and the legal nature of the contract governing such transactions. Additionally, the study aims to clarify the rights and obligations of both buyers and sellers, as well as the potential risks associated with these contracts. The main purpose of this research is to highlight key legal provisions that protect buyers, who are often the weaker party in these agreements, ensuring they receive the rights and safeguards necessary to prevent exploitation and financial loss.

1.5. Statement of the Problem

The research problem arises from the novelty of off-plan sales in Iraq and the absence of specific legislative regulation governing this type of transaction. As a result, numerous legal challenges have emerged, including fraudulent activities by fictitious development companies that promised housing to buyers, collected large installment payments, but ultimately failed to fulfill their contractual obligations or construct the promised real estate.

Due to the lack of a legal framework specifically regulating off-plan sales, the general provisions of traditional sales contracts and contracting agreements have been applied. However, these legal frameworks are not well-suited to the unique nature of off-plan sales, leading to several legal dilemmas. Unlike conventional sales or construction contracts, off-plan sales involve complex

financial and contractual obligations that require specialized legal protection. One major issue buyers face is the delay in the delivery of real estate units beyond the agreed-upon timeframe, resulting in financial losses and housing difficulties. Such delays may occur due to financial constraints faced by the developer, as well as technical or administrative challenges that hinder project completion.

Additionally, large-scale real estate projects sold off-plan may contribute to broader environmental and developmental concerns, such as adverse effects on local ecosystems, increased strain on infrastructure, and unplanned urban expansion. These challenges further emphasize the need for a well-defined legal framework to regulate off-plan sales and protect all parties involved.

1.6. Research Methodology

This study adopts an analytical and comparative approach to examine off-plan real estate sales. The analytical aspect involves breaking down key concepts, discussing them in light of relevant jurisprudential opinions, and linking them to appropriate legal provisions.

The comparative aspect focuses on studying the legal frameworks of jurisdictions that have established specific regulations for off-plan sales. By analyzing these laws, the study aims to identify their advantages and shortcomings, providing insights into how Iraq might develop a legal framework that ensures better protection for buyers and regulates investor obligations effectively.

1.7. Research Questions

1. What is off-plan selling?
2. What are the financial guarantees that protect the buyer's right in off-plan real estate sales?
3. What is the legal nature of off-plan real estate sales?
4. What legal guarantees exist to protect the buyer's rights at the contract formation stage?
5. What legal guarantees exist to protect the buyer's rights at the contract implementation stage?

1.8. Structure of the Study

This study is divided into three main chapters. The first chapter explores the concept of off-plan sales by defining off-plan real estate transactions and highlighting their distinctive characteristics. The second chapter examines the financial guarantees and legal nature of off-plan sales. It is divided into two sections: the first discusses the financial guarantees that protect the buyer's rights, while the second analyzes the legal nature of off-plan real estate sales. The third and final chapter focuses on the legal guarantees provided to buyers at different stages of the contract. It addresses the buyer's legal protections during both the formation stage and the implementation stage of the contract. The study concludes with key findings and recommendations based on the

analysis, offering insights into how off-plan sales can be better regulated to protect buyers and ensure a fair real estate market.

2. The concept of off-plan real estate sales and their distinctive characteristics.

This type of contract arises logically from the imbalance between the limited supply of housing and the increasing demand for it. Consequently, high property prices have become unaffordable for the vast majority of prospective buyers. Off-plan real estate sales have emerged as a novel solution, involving a sales contract for a property that has not yet been constructed. This approach raises numerous unresolved questions, particularly regarding the definition of such contracts. Given that off-plan sales are relatively new, there is ongoing debate and conflicting opinions about their conceptual framework. Therefore, it is essential to determine the legal nature of these contracts to understand their concept, commonly referred to as "sale on the map." In this research, we will explore the concept of this contract through two main objectives: first, defining the sale on the map; and second, examining the distinctive characteristics of off-plan real estate sales.

2.1. Defining the Off-Plan Sales Contract:

There are several jurisprudential and legal perspectives on defining the off-plan sales contract. Therefore, we will examine its definition in two separate sections. The first section explores the concept of selling real estate based on plans "on

the map" according to Islamic law, while the second section addresses its definition under statutory legislation.

2.1.1. Defining the Sale of Off-Plan Real Estate According to Jurisprudential Trends:

Islamic jurists, particularly contemporary scholars, have not explicitly defined the off-plan sales contract. However, some indicate that its origins can be traced back to Islamic law and that it has existed since ancient times. Over time, this contract has evolved to encompass the manufacturing of various items, including ships, airplanes, buildings, apartments, and other modern constructions.

As a result, some jurists discuss off-plan sales in the context of the *Istisna'a* contract. Among them is the renowned jurist *Wahbah al-Zuhaili*, who describes *Istisna'a* as a crucial mechanism for facilitating the construction of houses, buildings, residences, hospitals, universities, schools, and other structures that can be defined by specific measurements. Al-*Zuhaili* further highlights its role in industries that rely on precise standards and specifications, such as food production, where agricultural products are preserved through canning and freezing. He also acknowledges that the purchase of houses and residential units "on the map"—after obtaining official government licenses—can be conducted through *Istisna'a* contracts (Al-Zuhaili, 2002: 308).

Islamic law scholars define it as the exchange of something desirable for something desirable by mutual consent, according to the Hanafi school of

thought (Ahnaf). The Maliki school (Mālikiyya) defines it as a contract that does not involve direct benefits or sensory pleasure but is concluded with a specified compensation other than gold or silver. Meanwhile, the Shafi'i school (Shāfiʿiyya) defines it as the exchange of money for money in a specific manner (Abdul Dayem, 2007: 79).

When examining these various definitions by jurists, it becomes clear that they agree on the core meaning, despite differences in wording. Some scholars discuss the Istisna'a contract in this context, and Wahbah al-Zuhaili provides examples of its application, such as the sale of houses, buildings, and residential units "on the map" with specific descriptions. In reality, the sale of such properties can only be justified through the Istisna'a contract, making it a valid agreement—provided that the contract specifies the building's details to eliminate uncertainty and potential disputes. This approach allows for precise regulation of descriptions, cost estimations, and quality specifications. It also clarifies whether the sale involves a structure in its skeletal form or a fully finished unit, with agreed-upon finishing standards categorized as high, medium, or basic quality. Payment is typically made in installments on predetermined dates, and the delivery timeline is usually stipulated with a sense of urgency, ensuring reasonable completion within an approximate timeframe. If in the past, Istisna'a emerged from private needs and handcrafted industries—such as leatherwork, shoemaking, carpentry, household furniture, buildings, and residential housing—today, it has evolved into

a contract that serves public needs and large-scale interests. It now plays a crucial role in industries such as shipbuilding in large docks, aircraft manufacturing, and the production of various machines in vast, complex, and highly precise factories. This transformation has elevated Istisna'a to a prominent position among commercial contracts. (Al-Zuhaili, 1992: 308).

Examining Wahbah al-Zuhaili's statements on the Istisna'a contract, it is evident that he does not provide a specific definition of the off-plan sale contract. However, for such a sale to be valid and free from gharar (excessive uncertainty), all contractual terms—such as project details, timelines, and financial guarantees—must be explicitly outlined to prevent disputes over the rights of the parties involved.

In general, an off-plan sale is regarded as a mechanism that enables the buyer to acquire a future property based on their preferences, following the agreed-upon blueprint and design, while ensuring clear and sufficient guarantees for both parties.

2.1.2. Definition of Off-Plan Sales According to Legislation

French legislation defines off-plan sales in Article 1601 as a sale in which the seller commits to constructing a building or dwelling within a period specified in the contract. The sale may be concluded either as a term sale or based on the future state of completion (Law No. 67-547: 1967).

The second paragraph of the same article defines the first type, known as a term sale. Under this contract, the seller is obligated to deliver the completed building, while the buyer commits to receiving it and paying the agreed price upon delivery. Ownership is automatically transferred by law once the building's completion is officially documented, with legal effects retroactively dating back to the original sale agreement. The third paragraph defines the second type, based on the future state of completion. In this case, the seller immediately transfers to the buyer their rights to the land, along with ownership of any existing structures. However, full ownership of the property remains conditional on the completion of construction. The buyer, in turn, is required to make payments according to the progress of the construction work (Ali, n.d.:1006).

It is also defined as a contract for a property that has not yet been constructed, under which the seller commits to building a specific property based on a model outlined in the contract. The seller further undertakes to deliver the completed property to the buyer and transfer its ownership in exchange for a cash payment made by the buyer (Al-Awaden, 2001: 9).

The off-plan sales contract is one of the most significant modern real estate sale methods adopted by Algerian legislation in the field of real estate development. It was introduced as a solution to the ongoing housing crisis in Algerian cities. This contract represented a new concept in the Algerian real estate market, which had neither been formally regulated nor widely practiced until the issuance

of Legislative Decree No. 93/03 on real estate activity. However, the provisions of this decree were insufficient in several aspects. Its ambiguity and lack of precision failed to provide buyers with adequate legal protection. Moreover, fraudulent practices by real estate professionals left many citizens vulnerable to exploitation and injustice. These shortcomings prompted the Algerian legislator to repeal the decree and replace it with Law No. 11/04, which established clearer rules governing real estate promotion. This was later reinforced by Executive Decree No. 13/431, which defined the models for both contract of right and off-plan sales contracts, in addition to aligning with the general rules of civil law (Official Gazette, No. 44, Algeria, 2011; Official Gazette, No. 66, Algeria, 2024).

However, the Algerian legislator defines off-plan sales in Article 28 of Law No. 11-04 stating that "The contract of sale based on designs for a building or part of a building to be constructed or under construction is a contract that establishes the transfer of land rights and building ownership from the real estate developer (seller) to the buyer (subscriber), in parallel with the progress of the construction work. In return, the buyer (subscriber) is obliged to make payments as the project advances" (Law No. 11-04 on the rules governing real estate development activity, Article 3, 2011). Article 15 of Legislative Decree No. 93/03 on real estate activity, which corresponds to Article 1642-1 of the French Civil Code regarding apparent defects, applies exclusively to off-plan sales contracts. According to this provision, in a construction contract, neither the architect nor the contractor is

liable for defects that are apparent or known to the buyer at the time of delivery, provided that the buyer does not express any reservations about them (Mohamed Kamal Morsi, 1953: 499; Abdul Razzaq Ahmed Al-Sanhouri, 1964: 115).

Regarding the Jordanian legislator, the concept of off-plan real estate sales has been incorporated into the Real Property Law. Article 128 states: (a) The promise to sell a building, floor, or apartment on a registered real estate plot licensed for construction—whether construction has not yet begun, is in progress, or has not yet received an occupancy permit from the competent authority—shall be valid if the contract is registered with the Directorate of Registration. This provision establishes that the contract is legally binding on both parties. Furthermore, paragraph (b) of the same article clarifies the substantive obligations of the parties, stating: (b) The contract of promise to sell must include all agreed-upon conditions between the parties, particularly the price, the timeframe for completion, and the specifications of the building, floor, or apartment being sold. These specifications must be documented with detailed maps outlining every aspect of the property. Ownership is transferred to the buyer once these conditions, obligations, and specifications are met. Additionally, the law imposes obligations on the seller, mirroring those imposed on the buyer, ensuring mutual accountability in the transaction. According to Article 129(b) of the Real Property Law, ownership of the building, floor, or apartment promised for sale shall be

transferred to the promisee and registered in their name upon the written request of the contracting parties, provided that all conditions outlined in the promise to sell contract have been fulfilled and the required registration fees have been paid. Furthermore, Article 129(c) stipulates that if the buyer has not breached the contract, they may petition the court to issue a decision mandating registration. The court is also responsible for resolving any disputes between the contracting parties regarding the execution of the registered promise to sell contract or any of its conditions, including issuing a ruling for the registration of the building, floor, or apartment in the promisee's name (Al-Huwaimel & Al-Sarayra, 2024: 47).

Moroccan legislation has further clarified the concept of off-plan sales through Law 107.12, which amends and supplements Law 44.00. Article 618-1 of the Code of Obligations and Contracts defines it as "A sale of real estate in the process of completion is any agreement in which the seller commits to completing a property within a specified period and transferring its ownership to the buyer in exchange for a price paid by the buyer according to the progress of the construction work." From this definition, it is evident that this type of future sale involves a property that does not yet exist or is not yet completed, thereby creating obligations for both the seller and the buyer. The seller commits to completing the real estate project in the future, while the buyer is bound to fulfill their financial obligations under the contract. A key distinction in Moroccan and French legislation is the requirement to set a time limit for the completion of the

project. This differs from Algerian legislation, which does not explicitly impose a completion deadline on the seller (real estate developer). The inclusion of a fixed timeline in Moroccan and French law serves to prevent delays, ensuring that the seller delivers the property on time and that the buyer makes timely installment payments, thereby reducing risks of procrastination or contractual disputes (Amina Lahoul & Mustapha Boudiaf, 2022: 1755).

The UAE legislature has also defined off-plan real estate sales in Article 2 of Law No. 9 of 2009, which amended the provisions of Law No. 13 of 2008 regulating initial real estate registration in the Emirate of Dubai. The law defines off-plan sales as: "The sale of off-plan or unfinished real estate units." Prior to this amendment, the law had defined off-plan sales as: "The sale of real estate units that are off-plan, under construction, or unfinished." This legal framework establishes clear regulations for off-plan real estate transactions in Dubai, ensuring transparency and protecting the rights of buyers and developers alike (Law No. 9, 2009 – Law Regulating UAE Real Estate Plots).

Regarding the Emirate of Abu Dhabi, the off-plan sales contract is defined as: "A contract whereby the buyer obtains ownership rights to a proposed real estate unit according to the composite plan or floor plan" (Article 1 of Law No. 3 of 2015, Regulating the Real Estate Sector in the Emirate of Abu Dhabi). Similarly, the Qatari legislator has adopted a definition aligned with the UAE's, stating that off-plan sales involve: "The sale of real estate units whose construction has not been

completed" (Qatari Real Estate Development Law No. 6 of 2014). Likewise, the Bahraini legislator defines the off-plan sales contract as: "The sale of real estate units before their construction or completion at the time of contract"(Article 1, Decision No. 7 of 2015, Regarding the Off-Plan Sale Registration Register).

The Bahraini legislator has chosen the term "detached real estate unit" to refer to the property subject to an off-plan sales contract. This means that the unit must be a distinct part of a property ultimately located within a common property, thereby excluding from the scope of this law construction projects that are not part of common properties. For example, in Bahrain, contractors and investors may purchase land suitable for building a house. In such cases, the seller or real estate developer may enter into an agreement with the buyer (subscriber) to pay the purchase price in installments, with ownership transferred upon completion of construction, in line with the progress of the construction work. In this scenario, the real estate developer constructs the unit and receives the full price upon completion. However, Iraqi, Egyptian, Syrian, Yemeni, and Omani legislation have not yet regulated this type of contract.

Examining various legislative definitions reveals a clear convergence in terminology and meaning, as all describe the same fundamental concept—the sale of real estate units based on designs or plans before construction is completed. Essentially, the seller undertakes the construction, while the buyer commits to payment within an agreed timeframe. The term "off-plan sale" is broad

and can apply to both movable and immovable properties, such as ships, planes, cars, and real estate, though "sale of property on the map" more accurately reflects transactions involving real estate that is either partially constructed or still in progress. While most legal definitions emphasize ownership transfer and payment, some—particularly Algerian legislation—omit key elements, such as the seller's obligation to complete construction and a specific timeframe for project completion. In off-plan contracts, ownership transfer occurs progressively: the seller initially transfers ownership of the land and any existing structures, and as construction advances, each completed section gradually becomes the buyer's property until the entire project is finished. This incremental transfer mechanism ensures both parties' rights are legally safeguarded throughout the construction process.

2.2. Characteristics of Off-Plan Real Estate Sales

After establishing that selling property based on plans is a fundamental aspect of modern real estate transactions, it is essential to highlight the key characteristics of off-plan real estate sales.

1. The Off-Plan Real Estate Sales Contract is a Named Contract

A named contract is one that the legislator has specifically recognized, assigned a distinct name, and regulated with specific provisions, requirements, and financial guarantees. The off-plan sales contract falls into this category because it has been given a special legal framework distinguishing it from other contracts.

Legislators in various jurisdictions have regulated this contract under different legal frameworks: for instance, the Algerian legislator addressed it within the broader context of real estate promotion in Legislative Decree 11-04, while the Bahraini legislator incorporated it into the law governing the real estate sector. Similarly, the UAE legislator regulated it under the law governing the real estate registry, the Qatari legislator under the Real Estate Development Law, and the Algerian legislator also referred to it within the Real Estate Sector Law concerning real estate promotion.

2. The Off-Plan Real Estate Sales Contract as a Commutative Contract

An off-plan real estate sales contract is a commutative contract, meaning that each party provides something in exchange for a corresponding benefit. The seller transfers ownership of the property in exchange for the price paid by the buyer, while the buyer, in return, pays the agreed price to acquire ownership of the building. Since both parties exchange benefits, this type of contract falls under transactions that involve both gain and obligation, requiring legal capacity to act. This principle is established in Article 58 of the Algerian Civil Code and similarly defined in Article 1106 of the French Civil Code and Article 618 of the Moroccan Code of Obligations and Contracts (Amina Lahoul & Mustapha Boudiaf, 2022: 1758). The off-plan sales contract is thus characterized as a bilateral contract, creating mutual and reciprocal obligations. The seller is obligated to construct the property according to the agreed specifications, deliver it within the specified

timeframe, and transfer ownership to the buyer. In return, the buyer is required to pay the agreed price and take possession of the property upon completion (Tanagwa, 2005: 22).

3. The Off-Plan Real Estate Sale Contract is A Consensual Contract

Consent is one of the most important elements in a contract, as its absence renders the contract invalid. Consent means that both the seller and the buyer willingly agree to the contract without coercion, error, fraud, or deception; otherwise, the contract may be deemed invalid. For example, in France, the off-plan real estate sale contract is considered a consensual contract. Article 1601/3 of the French Civil Code states that a sale in the future state is a contract in which the seller immediately transfers their rights to the buyer concerning the land, as well as ownership of any existing buildings.

4. The Off-Plan Real Estate Sale Contract is A Formal Contract

The sale of real estate and real estate transactions, in general, require a specific form for their conclusion and validity. Article 508 of the Iraqi Civil Code stipulates that a real estate sale is not considered concluded unless it is registered with the competent department and meets the legal requirements. This requirement for formality is a legal necessity, and any contract that fails to meet this formal requirement is deemed null and void. Additionally, Article 1126 states that a contract transferring ownership of real estate shall not be considered valid unless

it adheres to the legally prescribed method, emphasizing the importance of formality in such transactions (Iraqi Civil Code, No. 40 of 1951, as amended).

The first paragraph of Article 90 of the Iraqi Civil Code stipulates that if the law prescribes a specific form for a contract, the contract shall not be considered concluded unless this form is fulfilled, unless otherwise provided. Additionally, Article 247 states that the obligation to transfer ownership or any other in-kind right results in the transfer of that right automatically if the object of the obligation is a specific thing owned by the obligor, without prejudice to the rules relating to registration. Furthermore, it specifies that a contract transferring ownership of real estate shall not be considered concluded unless it adheres to the legally prescribed method. Article 3/3 of the Real Estate Registration Law No. 43 of 1971, as amended, reinforces this principle by stating that no real estate transaction shall be concluded except through registration with the Real Estate Registration Department. These provisions confirm that, under Iraqi law, registration is a fundamental requirement for the validity of a real estate sale contract. Consequently, the contract remains incomplete until it is registered, meaning the seller retains ownership of the property until the registration process is finalized. In such cases, the buyer has no legal authority to compel the seller to complete the registration. This raises an important legal question: If the buyer cannot force the seller to register the contract, what legal rights and remedies are available to the buyer in such a situation?

Article 1127 of the Iraqi Civil Code grants the buyer the right to claim compensation for damages resulting from the seller's failure to register the contract. However, Iraqi jurisprudence has diverged on the legal basis for compensating the buyer in such cases. The Court of Cassation has ruled that, in instances of non-registration, the buyer is entitled to the return of the contractual consideration as well as the enforcement of the warranty clause. The court has also upheld the penalty clause stipulated in the contract, thereby recognizing the contract as valid, albeit an unnamed contract, despite the fact that, legally, it is considered void as a real estate sale contract before registration. To address this issue, the Iraqi legislator intervened through Decision No. 1198, issued by the now-dissolved Revolutionary Command Council on November 2, 1977. This decision, particularly in paragraph (a), clarified the compensation to which the buyer is entitled in the event of the seller's refusal to register the contract. Specifically, the buyer is entitled to compensation equivalent to the difference between the property's value at the time of the initial undertaking and its value at the time of the seller's denial.

This approach has been consistently followed by the judiciary since the issuance of the aforementioned decision. The Baghdad Court of Appeal, in its capacity as a court of cassation, ruled that the buyer has the right to claim compensation from the seller, which is determined as the difference between the property's value at the time of the initial undertaking and its value under the contract at the

time of the seller's refusal. The court also held that proving the seller's refusal to transfer ownership constitutes a valid ground for the buyer to seek compensation. Furthermore, Resolution No. 1198 does not require that the seller be the actual owner of the property. Importantly, the provisions of Resolution No. 1198 regarding compensation for the failure to register a real estate sale contract have effectively replaced the compensation provisions set forth in Article 1127 of the Civil Code.

Since the off-plan real estate sale contract is based on real estate, it must be a formal contract. It is not concluded merely by mutual consent between the parties through offer and acceptance; rather, it requires formal procedures, including registration with the Real Estate Registration Department (Al-Dhanun, 1976, p. 111).

5: The Off-Plan Real Estate Sales Contract as a Contract of Duration

Unlike a typical sale contract, which is considered an immediate contract where obligations are fulfilled upon conclusion, an off-plan real estate sales contract is inherently a contract of duration. Its execution extends over time, as it requires the seller, typically a real estate developer, to complete the construction of the project within a period specified in the contract. The price is determined at the time of contract formation but is paid or fulfilled progressively over time. Therefore, time is a fundamental element in this type of contract, influencing both the valuation of the property and the execution of obligations. Some contractual

aspects, such as construction progress and installment payments, can only be understood in relation to time. Moreover, the benefit derived from the contract is often assessed over a specific period, emphasizing the essential role of time in fulfilling contractual obligations (Malika Hamrit, 2002: 11).

6. The Off-Plan Real Estate Sales Contract as a Contract of Transfer of Ownership

In an off-plan real estate sales contract, the seller, typically a real estate developer, is obligated to transfer ownership of the property to the buyer. What sets this transfer apart from other sales is that it occurs gradually, in stages, as construction progresses. This characteristic is explicitly affirmed in Article 28 of Law 11-04, which stipulates that the seller must transfer ownership rights—whether of the land or the buildings constructed on it—incrementally as completion advances. Consequently, the buyer acquires ownership gradually until the entire building is completed. This feature is considered one of the most significant aspects of a sales contract in general, and of the off-plan sale contract in particular, as the very essence of a sale lies in the obligation to transfer ownership. Moreover, the off-plan sales contract is a legally recognized method of transferring property, requiring the buyer to fulfill their obligation by making payments as agreed (Musa Nessima, 2015: 4).

According to Article 351 of the Algerian Civil Code, the seller is obligated to transfer the property in exchange for a cash payment from the buyer, i.e., the

subscriber. In contrast, under French law, Article 1583 establishes that the principle of consent alone is sufficient for the transfer of ownership. In Algerian legislation, the rules governing the transfer of real estate ownership apply to properties that are either under construction or yet to be built. These rules are outlined in general real estate regulations, including Law No. 04-11 and Executive Decree No. 431-13.

According to Article 34(1) of Law 04-11, an off-plan sales contract constitutes a transfer of ownership, which must be formalized before a notary, followed by registration. Ownership of the land and buildings is transferred progressively as construction advances, as stated in Article 28. Meanwhile, Article 27 of the same law introduces the concept of a retention-of-title contract, under which the real estate developer is obligated to hand over the property—whether completed or under construction—immediately upon the conclusion of construction. This creates a future obligation to transfer ownership, which becomes effective on the date of the final payment of the agreed price, as stipulated in Article 31.

Furthermore, while the retention-of-title contract is legally formal, as required by Article 25, it is only registered and not publicly disclosed. Consequently, it does not transfer ownership in the sense of producing legal effects for third parties. If the transaction involves property that is not subject to monthly registration procedures, the developer retains ownership of the property, including the

building or any part of it, until full payment is made (Algerian Civil Code, No. 75–58, 1975).

7. The Off–Plan Real Estate Sales Contract as a Contract of Adhesion

An off–plan real estate sales contract is considered a contract of adhesion, meaning that the parties involved are not in equal positions of power. In this type of contract, the seller—typically the real estate developer—unilaterally sets the terms and conditions, leaving the buyer, whether an underwriter or a prospective owner, with only three options: to accept the contract as it is, to abandon the transaction, or to reject it altogether. This creates an inherent imbalance, where one party (the buyer) is in a weaker position and must accept the conditions imposed by the stronger party (the seller) without negotiation. Such an arrangement aligns with the fundamental nature of adhesion contracts, where the weaker party has little to no influence over the contractual terms.

Several criteria are used by jurists to determine whether a contract qualifies as a contract of adhesion. One key factor is that the offeror, typically in a strong economic position due to an actual or legal monopoly, is able to impose conditions on the weaker party, the buyer. Additionally, the contract may involve a commodity or service considered essential to consumers. A contract is often deemed one of adhesion when the offer is presented in a standardized template containing pre–set terms and conditions, leaving the acceptor with only the choice to accept or reject them without negotiation—this is known as standard

wording in contracts. At the same time, traditional legal standards for off-plan sales must also be considered. While applying these criteria suggests that an off-plan real estate sales contract could be a contract of adhesion, in practice, this classification is not straightforward. Regulatory oversight by competent authorities and legislative guarantees exist to protect buyers in off-plan sales, ensuring that they are not entirely subject to the seller's unilateral conditions. The buyer—the underwriter—is ultimately free to accept or decline the contract's terms. (Soar, 2004: 80). As a result, the contract bears some resemblance to a contract of adhesion, yet legislative interventions in Algeria, France, and other jurisdictions have aimed to safeguard buyers from unfair terms imposed by real estate developers

Examining these definitions, we find that some focus solely on obligations without addressing guarantees, while others emphasize the seller's obligations without mentioning those of the buyer. From the various perspectives discussed, we can derive a precise definition of off-plan sales as an official contract for a property still under construction, provided that the real estate developer offers sufficient technical and financial guarantees. In return, the buyer is obligated to make installment payments at different stages of project completion, with the value, method, and timing of payments determined by mutual agreement (Abdul Rahman, 2016: 338).

Finally, off-plan real estate sales possess several defining characteristics, including installment-based pricing, a future sale structured around design plans, and a complex contractual nature. With this, we conclude the first section of our research, which has established various jurisprudential definitions from Islamic law and other legal frameworks.

3. Financial Guarantees for the Buyer's Right to Sell Off-Plan Property and Its Legal Nature

There are financial guarantees in place to protect the real estate developer (i.e., the seller) and ensure they receive their due rights from the property. This research is divided into two key areas: the first examines financial guarantees, while the second explores the legal nature of off-plan real estate sales.

3.1. Financial Guarantees in Off-Plan Real Estate Sales

Financial guarantees in off-plan real estate transactions consist of various measures designed to protect both contracting parties throughout the buying and selling process. These guarantees may include:

1. Verification of Property Ownership

Ensuring that the seller is the legal owner of the property and that there are no outstanding legal claims or mortgages that could affect the buyer's rights is a crucial step in the sales process. Proper verification helps confirm that the buyer acquires the property from its rightful owner without future legal complications. This process involves reviewing the title deed, checking for any existing

mortgages or legal claims, and verifying the seller's identity, among other steps (Al-Nashawi, 2005, p. 415).

2. **Deferred Payment Arrangements**

In some cases, payment may be structured so that a portion is paid upon signing the contract, while the remaining balance is paid at a later stage, often upon property delivery. The contract specifies the timeline for completion and delivery based on project milestones or certain conditions, such as construction completion or ensuring the property is free from defects (Al-Kabi, 2002, p. 335).

3. **Assessment of the Seller's Financial Status**

Verifying the seller's financial standing can help prevent potential disputes, particularly in cases where the seller has outstanding debts that could impact the property's legal standing.

4. **Bank Guarantees**

The contract may include provisions for bank guarantees, such as letters of guarantee or bank checks, to ensure full payment and financial security for both parties.

5. **Property Insurance**

Insuring the property against potential risks before the transaction is finalized provides an additional layer of protection for both the buyer and seller.

6. **Mortgages as a Security Measure**

In some cases, the property may be mortgaged in favour of the buyer to secure the payment of the agreed amount, ensuring financial commitment from both parties (Ali, 2024, p. 1071).

All these guarantees aim to safeguard the rights of both parties in the event of disputes, payment delays, or issues related to the transfer of ownership. Modern legal frameworks have introduced financial protections for real estate developers, including the Real Estate Development Accounts Law, which provides financial guarantees to sellers, i.e., developers or real estate promoters, within off-plan sales contracts.

This is explicitly affirmed by Articles 4 and 5 of Law No. (8) of 2007 for the Emirate of Dubai: Article 4 establishes a special register called the Real Estate Developers Register, where all developers licensed to engage in real estate development must be listed. No developer is permitted to conduct real estate development activities unless registered in this official database and licensed by the competent authorities, in accordance with prescribed legal conditions. Article 5 stipulates that a developer may not advertise in local or international media, nor participate in real estate exhibitions—whether domestic or foreign—to promote the sale of off-plan properties unless they have obtained written permission from the Department. The Director General is authorized to issue regulatory decisions concerning advertising requirements and participation in exhibitions (Dubai Emirate Law, 2007).

Additionally, the executive regulations of the system for the sale and leasing of off-plan real estate projects provide financial guarantees for real estate developers, as outlined in Articles 5, 6, and 7. Article 5 specifies the financial capabilities required, including presenting financial statements prepared by a certified public accountant. Article 7 sets forth the conditions for the legal accreditation of real estate projects, requiring a valid commercial register, licensing by the Saudi Commission for Auditors and Accountants, and the successful completion of the rehabilitation program by at least 10% or four of the office's accountants, whichever is lower. Furthermore, it mandates obtaining the necessary licenses for the implementation of off-plan sale or rental projects (Decision of the Board of Directors of the General Authority for Real Estate No. (S/M/E/E/8/2024/T)).

There is no doubt that real estate projects require substantial capital to complete, which can pose challenges for real estate developers in meeting their obligations and fulfilling their commitments. As a result, developers often seek external sources of financing. Traditional financing methods provided by financial institutions typically come with high interest rates and require extensive guarantees from borrowers. Additionally, the complexity and lengthy procedures involved in obtaining such financing have prompted developers to explore alternative methods that better align with their financial needs without imposing excessive obligations. New financing methods, such as financial leasing and

lease contracts, have emerged as viable alternatives. Recognizing their importance, the Egyptian legislator and lawmakers in other Arab countries have introduced specific legal frameworks to regulate them. Upon closer examination of the off-plan sales contract, it becomes evident that its underlying mechanisms serve as one of these innovative financing methods. The financing aspect is particularly clear in the structured payment system, where buyers fulfill the price or make multiple installment payments, providing real estate developers with a steady flow of liquidity throughout the project's completion period. A key advantage of this financing model is the absence of interest, ensuring that developers do not incur additional financial burdens. Moreover, they are not required to provide extensive guarantees, making the off-plan sales contract a superior financing tool compared to traditional methods (Saeed, 2020: 54).

However, some legislation lacks financial guarantees for real estate developers, which may result in gaps or deficiencies in its legal framework. It is advisable to establish financial guarantees that protect both the real estate developer (seller) and the buyer (underwriter) to ensure a balanced and secure transaction for all parties involved.

3.2. The Legal Nature of Off-Plan Real Estate Sales

The nature of this contract is a subject of disagreement among jurists, as they differ in its classification. Some consider it a traditional sales contract, similar to the sale of an existing property at the time of the contract. Others view it as a

contracting contract, where the contractor is obligated to complete the agreed-upon work within the specified period stipulated in the contract. Another perspective classifies it as a form of the Istisna'a contract, a view held by the majority of jurists. Additionally, some see it as a contract of agency. Given these differing interpretations, the question arises as to whether off-plan real estate sales have a distinct and independent legal nature. In the following discussion, we will examine each of these perspectives in detail.

1. The Off-Plan Sale of Real Estate as a Contract for Construction

A contract for construction, as defined by the Iraqi legislator, is a contract in which one party (the contractor) undertakes to create something or perform labour in exchange for a fee promised by the other party (Article 864, Iraqi Civil Code). An issue arises regarding the distinction between an off-plan sale contract and a contract for construction, as both involve the completion of a project by one of the parties. Some believe that the primary difference between the two lies in land ownership (Shaaban, 2011: 18).

According to Article 865/1 of Iraqi law, the contractor may undertake only to provide labor without supplying the materials; this is known as contract for construction. Dr. Mohammed Morsi Abu Zahra identified three scenarios: first, If the landowner provides the materials used for construction, and the contractor's role is limited to labour only, the contract is considered a contract for construction. Second: if the employer provides only the land, while the contractor supplies both

labor and materials, the contract is still considered a contract for construction. Third: if the contractor erects the building on land he owns, or if the right holder grants him the authority to build on it using his own materials, then the contract constitutes a sale of a future object, which the legislator refers to as the sale of real estate under construction. Despite these similarities, a fundamental distinction exists between the two contracts: the issue of ownership transfer. In an off-plan sale, the seller is obligated to transfer ownership, whereas in a contract for construction, the contractor is only required to provide labor. Therefore, an off-plan sale cannot be considered a contract for construction (Zahra, 1989: 46). Furthermore, most legal systems do not classify the off-plan real estate sale contract as a contract for construction.

2. The Off-Plan Real Estate Sales Contract as an Istisna'a Contract

According to Article 865/2 of the Iraqi Civil Code, a contractor may undertake to provide both materials and labor, which constitutes an Istisna'a contract. Based on this provision, the Iraqi legislator considers a contract to be Istisna'a if the contractor supplies both the work and the materials. A segment of contemporary jurisprudence supports the view that off-plan sales qualify as Istisna'a contracts. This perspective argues that one of the most prominent examples of Istisna'a is the sale of houses and residential units based on predetermined specifications (i.e., off-plan sales). In such cases, the sale of these properties before their actual existence can only be justified under the Istisna'a contract framework. The validity

of the contract depends on clearly defining the construction specifications within the contractual terms, ensuring that no ambiguity remains that could lead to disputes or disagreements (Al-Farfour, 2007: 1005).

The legislator's treatment of the Istisna'a contract within the category of labor contracts, specifically under the provisions of contracting, and the application of contracting provisions to Istisna'a implies an oversight of its most crucial obligation—the transfer of ownership. However, this obligation is of greater significance than other obligations. Thus, while applying contracting provisions to Istisna'a may align with certain obligations arising from the latter, it is insufficient, in our view, to comprehensively cover all obligations associated with the contract, particularly in the context of off-plan real estate sales (Al Sarhan, 1996, p. 27).

There are significant differences between off-plan sales and Istisna'a contracts. In most comparative legislations, the Istisna'a contract is a consensual contract, requiring no specific formalities for its conclusion. In contrast, legislations governing off-plan sales classify it as a formal contract, requiring adherence to specific conditions and procedures for its validity (Saeed, 2020: 35). Therefore, the sale of off-plan real estate cannot be considered an Istisna'a contract. Its unique nature makes it difficult to fully apply contracting provisions, making it closer to a sale contract than a contract for construction due to the specific obligations it imposes on its parties, particularly the seller's obligation to transfer

ownership of the property. This transfer occurs in two stages: first, by registering the contract with the competent authority at the time of contracting, and second, by officially registering the property in the buyer's name with the relevant authorities after construction is completed.

3. The Off-Plan Real Estate Sales Contract as an Agency Contract:

Agency allows a person to be present in any place through their agent, enabling them to conclude contracts through others when they are busy or unable to attend the contract council. However, the agent must not deviate from the limits set in the agency contract, whether regarding the scope and subject matter of the agency or the method of execution specified by the principal. Some jurisprudence argues that a contract in which a person is obligated to build a property for another constitutes an agency contract, as the debtor in the off-plan real estate sale contract is required to perform the work (Al-Jubouri, 2013: 53). However, agency should apply only to legal acts and transactions. While the intermediary may perform some material acts, agency law does not justify these actions. Therefore, the sale of a property on the map should not be considered an agency contract, as agency is not a suitable legal basis for performing material acts. Additionally, agency contracts are generally non-binding for both parties, which contrasts with the binding nature of an off-plan sale contract.

4. The Off-Plan Real Estate Sales Contract Has a Special Independent Nature

From the above discussion, it is evident that while some legislations regulate off-plan sales, others do not. The Algerian legislature has addressed this contract through specific provisions within Law No. 33, recognizing it as a distinct legal contract with an independent nature, separate from ordinary sales and construction contracts. This distinction is based on the transfer of ownership of real estate that may exist in the future, differentiating it from conventional contract forms under general legal principles. Moreover, it includes guarantees that protect buyers while preserving the seller's rights. Similarly, Saudi, Jordanian, and Emirati legislations have regulated off-plan sales through special provisions that establish its unique and independent nature, distinct from other contract types. We support the view that this contract should be classified as a sale of future goods, as the seller's obligation—namely, the construction of the building—pertains to an asset that does not exist at the time of contracting but will materialize in the future. The contract is valid as long as the building's specifications are agreed upon at the time of conclusion. This principle is reinforced by Article 129/1 and Article 514/2 of the Iraqi Civil Code (corresponding to Article 131/1 of the Egyptian Civil Code). However, the French legislator has recognized the civil nature of this contract, as affirmed in the French Commercial Code No. 912 of 2000, Article 110/1/2 (Al-Sanhouri, 1964: 32).

At the conclusion of this research, it is evident that the legislator establishes financial guarantees to protect the rights of both the seller and the buyer,

ensuring that each party receives their due rights. Additionally, through the analysis of various legal provisions, we have clarified the nature of this contract. Based on these findings, we conclude that the off-plan real estate sales contract possesses a distinct and independent legal nature, separate from other contracts such as contracting, agency, Istisna'a, and similar agreements.

4. Legal Protection of the Buyer's Right in Off-Plan Real Estate Sales During the Stages of Formation and Implementation:

The sale of off-plan real estate is a common real estate transaction, particularly in new residential or commercial projects, where units are sold before their construction is completed. With the increasing prevalence of this practice, the need for legal protection to safeguard the buyer's rights has become crucial. This protection aims to balance the interests of both contracting parties (seller and buyer), ensure the fulfillment of agreed obligations, and shield the buyer from potential risks, such as delays in delivery or failure to meet agreed specifications. Legal protection of the buyer's rights in off-plan real estate sales is essential to ensuring fair real estate transactions and consumer protection. Clear and transparent legal frameworks enhance buyers' confidence in the real estate market, reduce disputes, and ensure that obligations are fulfilled fairly and effectively. Accordingly, this research is divided into two key sections: the first addresses the legal protection of the buyer's rights during the formation stage of

the off-plan sale contract, while the second examines the legal protection of the buyer's rights during the implementation stage.

4.1. Legal Protection of the Buyer's Right in Off-Plan Real Estate Sales During the Formation Phase:

Legal protection of the buyer's rights during the formation phase of an off-plan real estate sale is essential to ensuring fair transactions and safeguarding buyers from potential risks. Clear and transparent laws enhance confidence in the real estate market, reduce disputes, and ensure the proper fulfillment of contractual obligations. Off-plan real estate sales involve the sale of property units before construction is completed, a common practice in new residential and commercial projects. Since buyers often pay substantial amounts before seeing the finished property, legal guarantees play a crucial role in protecting their rights. To ensure adequate protection, several legal safeguards exist for buyers in off-plan real estate transactions. In this regard, it is essential to examine the stages of contract formation, which include both the pre-contract stage and the contract stage, each of which will be addressed separately.

4.1.1. Pre-contractual stage:

Through this stage, there are some guarantees that protect the buyer's rights in order to reach his right without dispute and these guarantees.

1. The written or notarized contract between the two parties, i.e. the real estate promoter and the subscriber, which contains clear and accurate data about the

project, which includes the specifications of the property, the date of delivery of the property, the materials used, the design, the area, the price of the building, apartment or villa, as well as the method of payment of the price and other data necessary for the affairs (Ibrahim, 2007: 187).

2. Administrative Licenses for Companies Selling Off-Plan Real Estate: Due to the high demand from buyers seeking to contract with companies and offices operating in the construction and real estate sector, some fraudulent companies have emerged, deceiving individuals by taking their money without constructing any buildings. To prevent company owners from exploiting people's need for housing, it became necessary to establish an administrative procedure that ensures buyer protection by requiring companies to have the actual capacity to engage in real estate construction. This procedure is represented by the administrative license imposed by the competent authority on those wishing to engage in off-plan real estate sales. The administrative license serves as a preventive measure taken by public authorities to prevent fraud and deception against buyers (Iraqi Investment Law, Article 7/A, 2006). It provides reassurance and confidence to buyers when entering contracts. In Iraq, investment licenses for housing construction issued to companies include guarantees and protections for buyers (Abd et al., 2017: 9).

3. Escrow Account: In many countries, laws require real estate developers to deposit buyers' payments into special escrow accounts to safeguard their funds.

The primary objective is to ensure that buyers can recover their money in the event of project failure or the bankruptcy of the real estate developer (seller). These accounts are supervised and managed by independent or governmental bodies to guarantee the transparent and appropriate use of funds (Ali, 2011: 104).

4. The administrative license is an official decision granted by the relevant authority, allowing an individual or entity to proceed with construction after verifying compliance with all legal requirements for the designated location. In the context of off-plan real estate sales, obtaining an administrative license is crucial, as the construction process may encounter obstacles that could ultimately result in the demolition of the building, leading to financial losses for the buyer. Such obstacles include construction outside the designated urban planning zones, building on land owned by others, or erecting structures in areas designated for the extraction of raw materials such as oil and other minerals. Therefore, Article 63 of the Iraqi Municipal Administration Law stipulates that no construction may commence without first obtaining a municipal license. This means that the competent authority responsible for granting administrative construction licenses in Iraq is the Municipality Directorate. The Municipality Directorate issues these licenses based on specific conditions, including the property's location, size, and the potential impact of construction on the surrounding environment. Similarly, Egypt's Law No. 106 of 1976, as amended by Law No. 101 of 1996, prohibits the construction, expansion, renovation, or

completion of any building without first obtaining a permit from the competent administrative authority. Furthermore, the same law regulating construction activities states that if an individual applies for a building permit and the competent authority fails to respond within two years from the date of submission, the application is considered approved, allowing the applicant to commence construction (Abd et al., 2017: 10).

5. Governmental oversight ensures that off-plan real estate projects are monitored by competent official agencies to verify that real estate developers (sellers) comply with legal and technical standards. This oversight also tracks the progress and development of projects, ensuring transparency in the use of funds and identifying any irregularities or complaints raised by buyers.

6. Regulating the advertising of construction projects is essential to ensure transparency and protect buyers from deceptive marketing tactics. After obtaining preliminary approvals for construction, sellers often entice buyers through persuasive advertisements that may include misleading phrases or exaggerated claims to influence their decision. Most legislations require that advertisements be free from deception or inaccuracies and mandate the inclusion of clear and accurate information necessary for buyers to make informed decisions with confidence. Legal frameworks establish specific guidelines for advertisements and promotional materials related to real estate projects before their construction. Furthermore, promotional content displayed on screens and internet platforms is

considered part of the contract and is binding on both parties if it clearly presents a set of commitments and obligations (Hussein, 2002: 134).

These and other guarantees serve to protect the buyer's rights and ensure they receive what they are entitled to. Additionally, safeguards exist to protect the buyer from the seller's bankruptcy, granting them priority in recovering their funds. The buyer also has the right to annul the contract in specific cases, such as delays in construction or deviations from the agreed-upon specifications. Furthermore, the buyer is entitled to require the real estate developer (seller) to obtain the necessary licenses and approvals from the competent authorities before the sale. Lastly, the buyer has the right to visit the construction site to monitor the progress and ensure that the building is being developed according to the agreed specifications.

4.1.2. Stage of Conclusion of Contract:

The sale of off-plan real estate involves the sale of future properties. As a contract, it must meet all the essential elements, including consent, subject matter, and cause. The consent of the parties must be given by individuals with full legal capacity and must not be tainted by any defect. For the consent to be valid, the offer must include all the essential elements of the intended contract, such as building specifications, the timeline for construction completion, and the associated costs.

This contract is made before construction begins, meaning the sold property is initially a plot of land without any buildings, registered in the seller's name in the real estate registry. This situation may expose the buyer's rights to potential risks. Given these risks, it is crucial to provide the buyer with certain protections and guarantees before concluding the contract. These guarantees may be legal or contractual. The buyer's guarantees before concluding the contract in off-plan sales include a set of legal, financial, and technical measures designed to protect their rights and minimize risks. The buyer must ensure that the contract includes all these guarantees. Therefore, in the off-plan sale process, several legal guarantees aim to protect the buyer's rights before the contract is finalized. These guarantees include procedures and measures that ensure the buyer receives the property according to the agreed specifications while mitigating potential risks. Some of the most important guarantees that the buyer must verify before signing the contract include:

1. Legal Safeguards Related to Payments: Financial payments in off-plan real estate sales should be deposited into a dedicated bank account separate from the real estate developer's (seller's) personal or business accounts. These funds must be used exclusively for the construction of the specified property, ensuring that they are not diverted for unrelated purposes. This measure, implemented in Iraq and many other Arab and foreign countries, provides financial guarantees that safeguard buyers by ensuring the recovery of payments if the construction

is not completed or if the real estate developer fails to meet contractual obligations. Such safeguards enhance confidence in real estate transactions and provide reassurance to buyers. The importance of this guarantee is particularly significant in off-plan real estate sales contracts, where the evolving nature of economic relationships gives rise to various legal concerns. This clause serves to protect the weaker party in real estate transactions by ensuring the proper execution of contractual obligations. Additionally, the contract may include a performance guarantee, requiring the seller to pay an agreed-upon amount or a predetermined percentage in case of delays or failure to meet obligations. This penalty clause acts as an effective mechanism to compel the seller to adhere to the agreed-upon construction timeline and specifications (Abd, 2017: 14).

Therefore, Article 170 of the Iraqi Civil Code and Article 223 of the Egyptian Civil Code stipulate that the contracting parties may determine the amount of compensation in advance, subject to the application of legal provisions governing the conditions of entitlement to compensation. These provisions also account for exceptions related to extenuating circumstances. Notably, the debtor is not required to provide compensation if their failure to fulfill contractual obligations is due to an external cause beyond their control.

2. Guarantees Related to Services, Utilities, and Technical Inspection

The real estate promoter must provide detailed documentation that includes engineering plans, property area, construction specifications, materials used, and

infrastructure details such as electricity, gas, and water. Additionally, the contract should specify details of common services, including parking spaces, gardens, and recreational facilities, along with guarantees that these services will be available upon delivery. Furthermore, a clause should ensure that the buyer will not be subject to additional fees for common services after delivery. Failure by the seller to disclose these guarantees may mislead the buyer, affecting their understanding of the essential qualities of the property. This aligns with Article 121 of the Egyptian Civil Code, which states that if a buyer would not have entered into the contract had they known the true characteristics of the property, they have the right to seek annulment. For instance, if a seller informs the buyer that an apartment is located on a main street, prompting the buyer to proceed with the purchase, but the buyer later discovers that the apartment is not on a main street, they may claim annulment due to misrepresentation or nonconformity with agreed specifications (Al-Mahdi, 1982: 233).

3. Guarantees Related to Insurance and Solidarity Guarantee

The property must be insured against potential risks such as fires and natural disasters, ensuring that the insurance coverage extends to the period before delivery. Additionally, the solidarity guarantee serves as a vital means of protecting the buyer, as it provides greater assurance that the construction will be completed. Under this guarantee, the guarantor commits all necessary funds to complete the construction, regardless of their amount. This means that the

value of the guarantee is not limited to a specific sum, and the guarantor assumes full financial liability for fulfilling the obligation. Furthermore, the buyer has a direct right to request the disbursement of expenses (Al-Sanhouri, 1964: 19). Article 1008 of the Iraqi Civil Code defines a guarantee as the inclusion of one liability within another, ensuring the fulfillment of an obligation. Additionally, Article 269(2) of the Iraqi Commercial Law No. 30 of 1984 (as amended) describes bank credit as a contract in which the bank makes a sum of money available to the beneficiary for a certain or indefinite period. This type of guarantee plays a crucial role in fostering buyer confidence and protecting them from financial risks.

These and other guarantees—related to quality, specifications, and future modifications in construction—offer the necessary legal safeguards to ensure the buyer's right to sell off-plan property at the contract stage.

4.2. Legal Protection of the Buyer's Right to Sell the Property in the Implementation Phase:

In an off-plan property sale contract, the real estate developer (i.e., the seller) has obligations beyond those in a standard sales contract. These include transferring ownership, guaranteeing protection against third-party claims, ensuring the property is free from latent defects, and meeting other legal commitments. These additional obligations give the contract a unique character and, at the same time, serve as legal safeguards for the buyer. The buyer's protection guarantees in

off-plan property sales encompass multiple stages, starting with full disclosure before contracting, adherence to agreed-upon specifications and timelines during implementation, and concluding with delivery in accordance with the contract terms, along with post-delivery guarantees. These legal protections enhance buyer confidence and reduce the risks associated with purchasing off-plan properties.

1. Ensuring the Construction of the Building in Accordance with the Conditions Agreed Upon in the Terms of the Contract at a Stage Prior to the Completion of Construction: The obligation to construct the building is one of the most important responsibilities imposed on the seller in an off-plan real estate sale contract. As defined by the French legislator in Article (601/1) of the Civil Code (as amended), the sale of real estate intended for construction is a sale in which the seller commits to constructing a building within a deadline specified in the contract. The seller must complete the construction by the agreed-upon date, and the building must comply with the specifications outlined in the contract. In an off-plan real estate sale contract, the seller is required to provide a detailed description of the property to be constructed, ensuring that it is sufficiently clear and accurate, as stipulated in Article (514/1) of the Iraqi Civil Code and Article (419/1) of the Egyptian Civil Code. Therefore, in the sale of off-plan real estate, the seller is obligated to construct the building in accordance with the agreed-upon

specifications, including all its elements and accessories, to ensure it is suitable for the intended purpose (Al-Hayari, 2009: 277).

Therefore, the issue of non-conformity of specifications in an off-plan real estate sales contract constitutes a legal deficiency under Iraqi, Egyptian, and French law, as there are no specific legal provisions in each of these jurisdictions that regulate the off-plan real estate sales contract. As for French legislation, although the legislator has given special attention to the contract for the sale of real estate under construction, Iraqi legislation may resort to applying the provisions of the obligation to deliver according to general rules in cases of non-conformity of specifications in the off-plan real estate sales contract. The lack of conformity in this contract is considered a breach of the obligation to deliver, which is one of the essential obligations in a sales contract. This allows the buyer to demand that the seller be compelled to fulfill their obligation in kind, whenever possible (Ali, 2011: 109).

In addition to his obligation to construct the building according to the specifications mentioned in the contract, the real estate promoter is also obligated to complete it on the specific date stipulated in the contract. Therefore, the obligation to finish the construction work within the agreed period or within a reasonable period is an obligation to achieve a result, not an obligation of diligence. It is not sufficient for the seller to be exempted from liability for delay by proving that he exerted the usual diligence to complete the construction work

on time but was unable to do so. He must also prove the existence of an external cause that led to the failure to achieve the result (Mubarak et al., 2011: 426).

In addition, another obligation of the buyer in the sale of off-plan real estate is his obligation to transfer ownership, which is confirmed by Iraqi, Egyptian, and French legislation. The Iraqi legislator made registration a pillar of the sales contract so that it cannot be concluded without it. Therefore, the property is not transferred either between the parties or with respect to the rights of third parties. Article (508) of the Iraqi Civil Code indicates that the sale of real estate is not concluded unless it is registered with the competent department and fulfills the form stipulated by the law.

In contrast, the Egyptian Civil Code permits an unregistered property transfer contract, provided that the transfer of ownership is suspended between the parties and with regard to third parties until registration is completed, as explained in Article (934) of the Egyptian Civil Code. As for French legislation, as outlined in Articles (1583-1601/1), the general rules of the French Civil Code do not require the registration of the real estate transaction for the transfer of ownership between the parties. The contract transfers ownership of the property as soon as it is concluded, even if it pertains to real estate. Registration is only required to invoke the transfer of ownership in the face of third parties. French legislation distinguishes two forms of transferring ownership in the sale of real estate under

construction: the contract that is concluded for free and the contract that is concluded according to the future state.

2. The Post-Contract Stage: The guarantees to protect the buyer in the sale of off-plan real estate encompass all stages, starting with the pre-contract stage and extending to the post-contract stage. After the delivery of the property, there are still additional guarantees to protect the buyer, including the obligation to guarantee exposure and entitlement. The principle is that the seller's obligation to guarantee arises by law, even if it is not stipulated in the contract. This is called the legal warranty, and there are also provisions of the warranty that are not of public order, meaning the contractors may agree to amend them by tightening, reducing, or dropping the warranty. This is called the consensual warranty. Regarding the legal warranty, Article (549) of the Iraqi Civil Code outlines the following: The seller guarantees that there will be no interference with the buyer in the utilization of all or part of the sale, whether the interference is from his own act or from the act of a third party who claims to have a right to the sale at the time of sale to invoke it against the buyer. The guarantee of interference is effective even if it is not stipulated in the contract. According to this text, the seller is obligated by the contract of sale to guarantee that he does not interfere personally, which is called the negative obligation, and that there is no interference by third parties, which is called the positive obligation (Suleiman Marks, 1980: 376).

The seller guarantees personal exposure, meaning that the exposure must actually occur. The mere possibility of its occurrence is not enough to claim the guarantee. It is required that this exposure deprives the buyer of the benefit, either in whole or in part. Additionally, the seller guarantees exposure caused by third parties. If a third party exposes the buyer and this exposure is based on a legal reason, the seller is obligated to cover the exposure. However, the seller is not obligated to guarantee physical exposure caused by a third party. In such cases, the buyer must bear the cost of the physical exposure from the third party. The exposure must occur immediately; the mere possibility or fear of its occurrence is not sufficient to fulfill the guarantee. Moreover, the cause of the exposure must precede the sale or be based on the seller's actions after the sale, as explained in Article (550/2) of the Iraqi Civil Code.

As for Iraqi legislation, there may be a legislative deficiency because there is no legal text specifically covering the sale of off-plan real estate, and the Civil Code also does not address this issue. However, the Iraqi legislator has excluded two cases from this principle, as mentioned in Article (559) of the Civil Code. In these cases, the buyer can return to the seller for the warranty if the buyer proves that the seller assured him that the sold property was free of defects and that he did not examine the property with the necessary care in reliance on this assurance. Alternatively, if the buyer proves that the seller deliberately concealed the defect from him, the defect in this case is considered latent and guaranteed by the seller,

even if the buyer could have detected it with ordinary care (Abd et al, 2017: 23). As for French legislation, the solution to the issue may be found in Articles (1642/2) and (1648/2).

In this regard, Article (1648/1) of the Civil Code stipulates that the seller of real estate for construction cannot be exempted from responsibility for apparent construction defects at that time—not before the delivery of the works and not before the expiration of a month after the buyer's possession of the property. This clarifies that the seller is responsible for defects in the sold property that are apparent, and it is not required that this defect cause damage to the building or render it unfit for its intended purpose. Additionally, according to the provisions of Article (1648/2) of the aforementioned law, the buyer is supposed to file a warranty suit within one year from the later of two events: the buyer's receipt of the property, subject to the one-month deadline after the buyer's receipt, or the expiration of the contract. The buyer has no recourse to cancel the contract or reduce the price if the defect is repairable and the seller agrees to perform the necessary repairs.

If it appears to the judge that the defect cannot be repaired, he may rule to reduce the price if the defect is not substantial. However, if the defect is substantial, he may rule to rescind the contract. In all cases, the buyer may request compensation for the damage he suffered. For example, if the buyer was forced to search for alternative temporary housing at a high cost due to the need for

repairs in the property. As for the extent to which the seller can exempt himself from the warranty of apparent defects, according to the provisions of the same article of the French Civil Code, the seller cannot require the buyer to exempt him from this guarantee once the defect becomes detectable, meaning after the delivery of the property or one month after the buyer's possession of the property. Therefore, any exemption clause agreed upon before this time is void (Abd et al., 2017: 22).

As for latent defects, they are contingent issues that are illogical in the context of a sale (Al-Fadhli, 1997: 123). As for Iraqi legislation, it lacks legal provisions specifically addressing the sale of off-plan real estate. The same principle applies to the Egyptian Civil Code, which similarly lacks provisions on this matter. Therefore, in light of this legislative deficiency, can we apply the provisions concerning the guarantee of latent defects in the sales contract, considering that the contract for the sale of off-plan real estate involves the sale of future property that does not exist at the time of contracting? In other words, does applying these provisions to such contracts lead to practical results that effectively achieve the purpose of the guarantee in these types of contracts? From this perspective, Article 558 of the Iraqi Civil Code stipulates that the seller is obligated to provide a guarantee if a defect appears in the sale. The article further adds a condition for this warranty, namely that the defect must be old, meaning it must have existed at the time of the contract. Therefore, the provisions of the guarantee for

latent defects in the sales contract are not applicable to the off-plan real estate sale contract. This guarantee arises at the time of the sale and is limited to defects that either exist at that time or occur after it. However, in an off-plan real estate sale contract, the property is not yet available for delivery, as the sale pertains to a future property that does not exist at the time of contracting. Article (568) of the Iraqi Civil Code stipulates that the seller's guarantee for latent defects can be reduced or eliminated through a special agreement between the seller and the buyer. This agreement is valid unless the seller deliberately conceals the defect in the sale in order to deceive the buyer. The application of this provision to off-plan real estate sale contracts leads to significant practical issues, as it could strip the warranty of its value. The seller can simply include a clause in the contract to reduce or waive the warranty, which in many cases forces the buyer, particularly amid a housing crisis, to accept such conditions. Therefore, for this guarantee to be practical in the context of off-plan real estate contracts, the provisions of the guarantee should be considered a matter of public policy. This is especially important given that the contract typically involves a seller who is an expert in construction matters and is familiar with its complexities, while the buyer is usually less knowledgeable about the construction profession and its intricacies (Abd et al., 2017: 25).

As for French legislation, it provides the buyer with additional protection in the area of latent real estate defects. It does not rely solely on the general rules for

guaranteeing latent defects in the sales contract but extends the seller's responsibility for latent defects in the sale of real estate intended for construction. In this context, the seller is compared to a contractor. Under Article (1792) of the French Civil Code, the seller is responsible toward the buyer (or the buyer's assignee) for damages, even if the defect is in the land, provided it threatens the durability of the building or makes it unfit for its intended use. This responsibility applies when the defect affects a basic element of the property or one of its components. The seller can only avoid responsibility if they can prove the damage was caused by a foreign cause. The presumption of liability established in Article (1792) also extends to damage affecting the durability of the building's components. As a result, the seller's responsibility for guaranteeing latent defects in the sale of off-plan real estate carries similar consequences to those outlined in Article (1646/1) of the French Civil Code, which applies to defects that are apparent. The buyer cannot resort to canceling the contract solely for apparent defects, but if the judge determines that the defect cannot be repaired, they may rule to reduce the price if the defect is not material. In any case, the buyer may seek compensation for damages suffered. However, if the defect is material, the judge may rule to rescind the contract if the buyer has suffered significant damage.

5. Conclusion

At the conclusion of this research, we have drawn several key findingd and suggestions:

5.1. Findings:

1. It was found that Iraqi legislation does not regulate the off-plan sales contract in the same manner as other Arab legislations such as those in Morocco, Bahrain, the UAE, and some foreign legislations like those in France and other countries.
2. While off-plan sales involve the sale of a future object, this type of sale is distinct from other contracts involving future objects. It pertains to a specific property, and its completion is tied to the price, which is used to finance the construction and housing process.
3. According to Islamic law, the concept of off-plan sale is viewed as the exchange of something desirable for something else desirable by mutual consent. This is the perspective of the Hanafi school. Meanwhile, the Maliki school defines it as a contract that is offered without benefits or immediate enjoyment, with a single equivalent other than gold or silver. The Shafi'i school also defines it as the exchange of money for money in a specific manner.
4. It was revealed that French legislation, as defined in Article 1601 of the Civil Code, considers off-plan sales as contracts in which the seller commits to constructing a building or dwelling within a period specified in the contract. The

sale may be made for a set term or based on the future completion of the property.

5. The sale of off-plan real estate has several key characteristics, including being a contract with specific terms and conditions. The most important feature of the off-plan real estate sale contract is that it transfers ownership of the property to the buyer. In this case, the seller, typically the developer, transfers ownership of the building to the buyer (the underwriter). What differentiates this transfer from other types of sales is that the transfer occurs in stages, gradually, as the construction progresses.

6. The sale of off-plan real estate has a unique nature that distinguishes it from other types of contracts.

7. Some legal systems may confuse the sale of off-plan real estate with other forms of contracts, raising the question of whether these legal systems can be applied. This has prompted us to distinguish it from other contracts such as traditional primary sales, contracting, and istisna'a. While there are similarities between the sale of off-plan real estate and these systems, the differences are more significant, justifying the consideration of off-plan real estate sales as a special contract.

8. The seller's obligation to inform the buyer in an off-plan real estate sale contract is one of the key guarantees protecting the buyer. This obligation is results-oriented, as the relationship between the two parties is characterized by

an imbalance: one party (the seller) is well-versed in the subject of the contract, while the other party (the buyer) lacks such knowledge. This obligation aims to restore balance and provide the buyer with the maximum possible protection.

9. There are numerous guarantees in place to ensure the buyer's rights are upheld and protected by the legislator, from the formation stage to the implementation stage of the contract.

5.2. Recommendations:

1. We recommend that the Iraqi legislator develop or introduce a specialized law governing the sale of off-plan real estate, similar to the laws implemented in other countries.

2. We recommend that, when drafting this specialized law, the Iraqi legislator address all legislative gaps, particularly in ensuring the regulation of apparent and latent defects, as the current Civil Code lacks provisions specific to the sale of off-plan real estate.

3. We recommend that the Iraqi legislator tailor the sale of off-plan real estate to reflect its unique nature and specific requirements.

4. We recommend that the Iraqi legislator introduce regulations that provide mandatory protections for beneficiaries of real estate promotions. These regulations should clearly define the obligations of the real estate promoter to the seller, emphasize guarantees, and outline the responsibilities of real estate promoters, contractors, and study offices. This is crucial due to the lack of

harmony and consistency, which has led to failures in holding the real estate promoter accountable for their civil and professional duties, often resulting in fraud, manipulation, and evasion of responsibility. This situation harms both the real estate sector and the citizens involved. The current ambiguity and inadequacy of legal texts turn what should be a blessing into a curse for this sector and for the public.

5. We also recommend the development of a clear provision that obliges investors or sellers in off-plan real estate sales contracts to insure against their liabilities. Additionally, we propose another provision that mandates the seller to inform the buyer of all relevant details related to the contract, both during the pre-contractual and contractual stages. This obligation should be results-oriented, ensuring that the buyer is fully informed at all stages of the transaction.

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