

Review pre-sales contracts and building partnership law in Iran

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Abstract

With the increasing of population in large cities, housing has risen as basic need and individuals are involved in its construction in professional or sometimes legal entity. Today, contracts known as participation in construction and pre-sales gained tremendous popularity that caused several lawsuits, in this regard pre-sale law that was adopted in 2010. Protection Act was brought to support pre-buyers and its rules are mandatory and in this regard have been trying to block all the doors to the likelihood of abuse. The legal nature of such contracts and conditions and its effects brings ambiguity to mind that in this study by using qualitative analytical method we review the two types of contract in judicial way. The results show; current partnership in the construction contracts should be based on framework of 2010 new pre-sale law and the nature of these contracts didn't take place in certain cases or in any specific or similar contracts and is describable on grounds of the principle of freedom of contract and autonomy in Act 10 of constitution law and as an independent contract.

Keywords: partnership contract- Advance sale contract- Mass production- Building.

Introduction

One of the characteristics of our time is the emergence of new contracts that were made for needs that didn't exist before or they weren't given any attention. As some contracts in the past were basic and today are more developed.

Rising inflation and rising prices of building materials, increase in price of land and buildings made builders and buyers face much bigger problem for building and buying. Pre-sale institution emerged to facilitate the construction and purchase of buildings. This risk is mainly due to the fact that pre-buyer pays part of the price that there is no building there or it is half built. It means that pre-buyer in contrast to pay part of the price educates pre-seller's commitment to build the structure. The law is the law of building's pre-sale that was approved by parliament on 2.1.2011 and the Guardian Council approved it on 19.1.2011. The present study examined pre-sales and partnerships contract in Iran's law.

Research background

In the history of research no research as examination of pre-sales and partnerships contract in Iran's law was found by researcher.

Hypotheses

1. It seems like there are some ambiguities about pre-sale of buildings and partnership contract that there are different opinions on the matter.
2. It seems like; partnership contract is describable on two grounds of freedom of contract and autonomy in terms of article 10 of the Civil Code and as an independent contract.
3. It seems like; Apart from the courts and arbitration in case of disagreement, Regulatory authority does not provide parties to resolve the dispute in Iranian law.

The nature of pre-sales contracts for building

Advance sale contract is one of the most complex contracts in terms of the legal nature of the current contracts in the common transactions and the legal community in Iran. That's why before the pre-sale Building Act of January 2011, legal precedent and doctrine had different opinions and rights of each individual in relation to the legal nature of these contracts.

Research Methodology

The research is the fundamental purpose and the nature of qualitative and quantitative analytical method has been used. Data collection is also a library and documents and data gathering tool in this study include: Books, articles, theses, legal documents, online tools such as search engines, statistics, reports, tables, forms, etc. which is provided for taking notes. Both data analysis is content analysis.

Pre-sale contract

Article 1 of the pre-sale contract of building says that: "Any contract with any title which, Official owner of land committed to construct or complete a construction on a land and the building block for any type of use from the beginning or during construction or after completion of construction and completion becomes property of the other party. In terms of provisions of this law, "Building sales contract" is considered.

Pre-sale contract form under the law of building's pre-sale

Article 4 of the forward sale contract to sell the building at the offices knows 5 conditions necessary:

1. Investor in return for investment through the construction on land belonging to another along with contract and by virtue of an official document certain building blocks of the building constructed on the land allocated to them.
2. Land tenants including civil, government, endowed that according to the official document on the same right to lease their construction.
3. Obtaining liability insurance in Article 9 of the pre-sale of building.
4. Building upon the approval of the supervisory engineer for building operations is another condition that substance of the law for pre-sale of the building for a forward sale contract is deemed necessary building, approval of the supervisory engineer building foundations is to end operations, article 4 of the said Act, the exact phrase in paragraph (d) of Article 5 of the bill is presented to Parliament.
5. Answer inquiring from the Department of documents and properties of place where the property is, no such clause, existed in bill of parliament first and only in paragraph 5 of Article 4 pre-saledocument is one of the required papers by law to contract building; this demonstrates the rigor and accuracy of the law against such contracts.

Construction works in the partnership agreement of the parties

Participation in the construction contract will be effective as soon as the parties, rights and obligations of this contract come to them ;Swap is the mutual rights and obligations to be created for each landowner and partner .Continuing obligations of each of the parties involved in the construction of separate and mutual rights and obligations of the parties.

Conclusion

In this study, after discussing hypotheses Manhñ Fih the following results has achieved :Participation in construction contracts in the last two or three decades after the adoption of the urban land law and from 1994 proposed by the government was the time of Housing and Urban Development .The contract different species in terms of subject construction contract for participation in the construction contract, assignment Earth in order to massively participate in the project preparation of contracts and partnership treaty - the management of endowments and private individuals municipal government and the parties entered into the database.

The contract contained side pillars and their shares. Private owner or land interests first side and a second side to the construction contract are committed partner.

The studies can be conducted and in response to the first question research can say that; pre-sale contract because of two matters is not applicable with sale suspension, Futures sale in terms of generality of subject of the transaction is not applicable to the contract of pre-sale .In addition, the sale will not be carried forward in dignity and land.

Istisna contract as one of the examples were examined contracts directive possession, to implement Istisna the contract of sale of the building Istisna terms of the contract were studied. An Artisan objection to the form of futures sales as well as the need of the subject of the transaction and pays the bill in the House does not have the contract .However, the implementation of pre-sale contracts with terms of these contracts are considered Istisna that is among religious works that have Istisna that has always been regarded as goods and chattels are mainly product and industrial products .Existing property is the land and destroyed the destroyed building are possible due to existing property are possible which should not be equated with the

destruction .Pre-sale contract is not destroyed building past the Earth as part of the deal there at the time of contract ,their foundations, according to paragraph 4 of Article 4 of the forward sale contract to sell the building to be known.

Pre-sale contract in respect of the basic conditions essential function of the conditions of article 190 BC and shaped buildings sale is subject to Article 4 of the law .Article 4 of the forward sale contract of sale is subject to the evidence or official documents such as official documents of ownership or contract lease with the right construction official indications that investment in exchange traded with the right to sell the building erected on the field devoted to the seller.

Making the whole building independent technical license and identity card for each unit of the liability, insurance policy referred to in Article 9 of the said Act and approval of the supervisory engineer to end operations building foundations and answered inquiries from the Department of Registration of Deeds and Properties knows the location of the property.

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