

Construction crisis and sale by future state of completion (“VEFA”)

Throughout Europe, the real estate market has been strongly impacted by cyclical factors, and Luxembourg is no exception. According to the National Institute of Statistics and Economic Studies of the Grand Duchy of Luxembourg (“STATEC”) the number of transactions involving apartments has decreased by 38.2% in 2023 compared to the 3rd quarter of 2022. The house sales segment also experiences a significant decline in activity in the 3rd quarter of 2023, with a 47.3% drop compared to the same quarter of the year 2022. Activity in the market for the sale of building plots records a decline of 56.4% compared to the 3rd quarter of 2022.

It is the reason why the government just decided to declare certain branches of the construction sector in crisis for a period of 6 months until July 2024 and to resort to partial unemployment.

This necessarily also affects sales by future state of completion (“vente en l'état futur d'achèvement”) (hereinafter “VEFA”).

VEFA refer to the purchase off-plan an apartment/a house from a developer whose construction has not started or is not completed at the time of the sale. The future works become the property of the buyer as they are executed and the buyer pays the price as the work progresses.



The main advantage of the VEFA is the legal requirement for the developer to provide several guarantees that protect the buyers, starting with the completion guarantee. (“garantie d'achèvement”).

So, when the developer is no longer able to complete the construction, the guarantor will either pay or make available to the buyers the necessary funds to finish the work. In return, the buyers must pay the remaining and already paid instalments for the tasks that were not completed.

In general, in the event of the developer’s bankruptcy, buyers try to activate the completion guarantee, in order to have their construction finished.

Nevertheless, article 4 of Grand Ducal Regulation of February 24, 1977, as amended, implemented in accordance with Article 1601-5 of the Civil Code, as amended provides that “The seller and the guarantor have the option, during the execution of the sales contract, to substitute the completion guarantee provided for in Article 2 for the refund guarantee (“garantie de remboursement”) or vice versa, provided that this option has been stipulated in the sales contract. This substitution must be notified to the buyer.”

This means that the seller and the guarantor have the possibility to prevent the completion guarantee from taking effect and reimbursing the amounts already paid by buyers, which can become problematic for individuals who intended to acquire a home and have incurred debts for this purpose and who are generally unaware about the existence of this faculty.

That is why it will be crucial buyers to seek assistance in negotiating their VEFA contract.

LLF is of course available to assist you with such services..