

## The impact of economic transformations in Algeria on the implementation of private real estate development activities

Elfodda Mohammed

University of Tamanrasset (Algeria), Email: [elfaddamohamed@univ-tam.dz](mailto:elfaddamohamed@univ-tam.dz)

Laboratory for Development Strategies in the Border Regions of the Great South

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### Abstract:

The implementation of infrastructure projects in light of the economic transformations witnessed by Algeria requires partnership between the public and private sectors. This topic has gained great importance recently as it is one of the important approaches presented on the scene, as the study aims to explain the legal measures and procedures adopted by the Algerian legislator, which require restructuring the real estate arena and opening the field of real estate promotion; on the basis of free competition between the public sector and the private sector Expanding its scope of intervention in line with the developments taking place in the current real estate market, with the presence of specialists in the field of real estate upgrading, as well as expanding financing operations in the housing sector to encourage the success of the real estate policy pursued with the concept of real estate upgrading.

**Keywords:** Real estate developer; official; right preservation contract; design construction contract; guarantee fund.

### INTRODUCTION

Algeria has attached great importance to the housing sector since independence by financing housing projects in various forms from the public treasury and completing them through public bodies, as housing is one of the main concerns of all countries, and in line with the economic trend pursued at that time. Among these qualified institutions that were entrusted with this task are the Office of Real Estate Promotion and Management, family housing promotion

institutions and real estate cooperatives. Despite this, However, the state was unable to advance this sector alone, which exacerbated the housing crisis, especially with increasing demographic growth, rural displacement, and changing living patterns.

With the increasing demand for housing in line with demographic growth, and especially in light of the increasing social value of housing, the Algerian legislator intervened by issuing Law 86-07 dated 04/03/1986 relating to real estate upgrading, which positively opened the way for the private sector to invest in the housing sector.

Real estate upgrading is one of the most important legal and economic tools that can contribute to urban development and housing provision. Real estate upgrading activity in Algeria is one of the activities that has witnessed remarkable development through the volume of legislative and regulatory texts in this regard, influenced at every stage by the nature of the existing political and economic system, and by social and environmental conditions (population density and the prevailing standard of living...) This has led the Algerian state, in light of the market economy, to open the way for the private sector to invest in real estate activity, that is no longer limited only to housing, but rather includes a group of operations that contribute to the completion of real estate projects designated for sale, rent, or meeting special needs.

This required restructuring the real estate arena, opening up the field of real estate promotion on the basis of free competition between the public and private sectors, and expanding the scope of its intervention in line with the developments witnessed by the current real estate market, in the presence of individuals specialized in the field of real estate promotion, as well as expanding

financing operations in the housing sector to encourage the success of the real estate policy pursued with the concept of real estate promotion.)<sup>1</sup>(

Accordingly, we pose the following problem: **What is the mechanism adopted by the Algerian legislator in the field of housing in light of the free economy and the principle of free competition in light of Law No. 11-04?**

Sub-questions arise from this problem :

-What is meant by private real estate developer ?

-What are the legal restrictions for practicing private real estate upgrading?

To answer the above problem, this study has been divided into two axes. The first axis is concerned with the conceptual framework, while the second axis will address and explain the legal controls for practicing private real estate promotion.

### **The first axis: The concept of private real estate development.**

After independence, the Algerian state focused on building and construction in a command economy, and reserved for itself the responsibility of undertaking this task through its public institutions in line with this trend. This included building public institutions as well as building housing, to which the state paid special attention as a strategic sector in the field of social development. Therefore, Law 86-07 dated 04/03/1986 relating to real estate promotion was issued, in order to regulate and manage real estate. It aimed to build for sale in the field of housing, and it gave priority to the public sector, considering that working in the field of real estate promotion is a civil work that does not aim to achieve profit.

However, with the new economic orientation of the state, Law 88-04 was issued regarding the independence of public institutions of an economic

nature in preparation for entering the market economy. This law was repealed by Legislative Decree 93-03 dated 01/3/1993 regarding real estate activity, as the first chapter of it was devoted to real estate promotion, thus clearing the way for the private sector to invest in the real estate sector.

The construction or renovation process in the field of real estate is undertaken by what the law calls those dealing in real estate promotion or real estate advancement.

### **First: Definition of real estate developer.**

For Law No. 86-07 relating to real estate promotion, the private operator is represented by private individuals carrying out self-construction, whether they are individuals or regulars in real estate cooperatives, in addition to natural or legal persons subject to the private law<sup>2</sup>. The legislator considered it, under Legislative Decree No. 93-03, as: "a natural or legal person who initiates the construction of new projects, restoration, rehabilitation, renewal or restructuring." Or supporting data that requires one of these interventions, or preparing and qualifying networks directed at selling or renting"<sup>3</sup>(

#### **1- Legal definition of real estate developer:**

##### **A- Definition of real estate developer in Law No. 11-04:**

The Algerian legislator defined real estate developer in Law No. 11-04 as: "Any natural or legal person who initiates the construction of new projects, restoration or rehabilitation, renovation, restructuring, or reinforcement of buildings that require one of these interventions, or the preparation and rehabilitation of networks for the purpose of selling or renting them, is considered a real estate developer in the concept of this law"<sup>4</sup>(, This text is consistent with what is stated in Article

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<sup>1</sup> - Guedira Mohammadi, Activities and Fields of Real Estate Promotion, Graduation Master's Degree, Specialization: Real Estate Law, Faculty of Law and Political Sciences, Department of Law, Ziane Achour University, Djelfa, Academic Year: 2014/2015, p. 1.

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<sup>2</sup> - Article 6/3/4 of Law No. 86-07. Dated 03/04/1986, relating to real estate promotion, cancelled.

<sup>3</sup> - Article 3 of Legislative Decree No. 93-03. Dated 01/3/1993, relating to real estate activity.

<sup>4</sup> - Article 18 of Law No. 11-04; same reference.

3 of Legislative Decree No. 93-03, and the same law adds: "A real estate property is considered, in terms of all rights and duties, a real estate property designated exclusively for construction and/or urban renewal for the purpose of selling it"<sup>1</sup>(.

By extrapolating the two definitions above, it can be concluded that the Algerian legislator, in the first definition, defined real estate upgrading on the basis of the areas granted to it by law, making the initiative to undertake construction operations for new projects the basis of its tasks; while in the executive decree, in addition to the previous definition, it defined it as a procedural definition based on the license and accreditation that enables it to carry out its work, which the legislator confirmed in the same decree.

In this regard, we should not forget to point out that the real estate developer was described as a "candidate" in Article 9 of Law No. 86-07, while he was called a "dealer" in Article 3 of Law No. 93-03. He was not called by the term "real estate developer" except in Law No. 11-04 in all its texts, starting with Articles 3, 4.... 17 18 22 23...; either explicitly, or through the general activity of real estate promotion.

## **2- The jurisprudential and judicial definition of real estate promotion.**

### **A- The jurisprudential definition of real estate upgrading:**

The jurists' definitions of real estate upgrading varied. Some Western jurists, such as Professor Saint Alary Roger, defined it as: "A natural or legal person whose activity is to take the initiative in the

real estate construction process and organize it at the legal, technical and financial levels and lead it until the building or parts of the building are placed at the disposal of its users"<sup>2</sup>(. The Arab jurist Abd al-Razzaq Hussein also defined it as: A person who, in return for an agreed-upon fee, undertakes to carry out real estate operations entrusted to him by the employer, pursuant to a real estate financing contract, by carrying out all the financing required for this investigation, and managing and concluding all necessary legal actions in the name of the employer, until the work is delivered free of defects"<sup>3</sup>(.

### **B- Judicial definition of real estate upgrading:**

At the judicial level, the Paris Council defined on June 12, 1963, real estate upgrading as: "Every natural or legal person who takes the initiative directly, or through a company dedicated to construction, or the acquisition of a property, or part of a property dedicated to housing, and accordingly takes the initiative and takes full care of the process"<sup>4</sup>(. As for Algeria, the judiciary did not provide any definition of real estate upgrading. Although one of the decisions issued by the Supreme Court in 1992 included the Real Estate Promotion and Management Office within the category of real estate developers who, in performing their activities, stand in solidarity with the contractor, when the Supreme Court judges considered the council judges to have excluded the Real Estate Promotion and Management Office from the dispute, despite the fact that the experience achieved showed that it was a

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1 - Article 2 of Executive Decree No. 12-84 dated to February 20, 2012, specifies the methods for granting accreditation to practice the profession of real estate developer, as well as the methods for maintaining the national schedule for real estate developers. J, R, Issue 11, February 26, 2012. Amended and supplemented by Executive Decree No. 13-96 dated to 26 February 2013, Vol. 13, No. 13, issued on: 6 March 2013. Amended and supplemented by Executive Decree No.: 19-243, dated 8 Muharram 1441 corresponding to 8 September 2019, Vol. 55, issued on: 15 September 2019.

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2 - Abdelmuhaymin Hamza: "The Real Estate Recovery Center in Housing Policy in Morocco", Al-Manara Journal of Legal and Administrative Studies, Issue 3, January 2013, p. 4.

3 - Abdul Razzaq Hussein Yassin, The Private Liability of the Architect and the Building Contractor, Its Conditions and Scope of Application, and the New Guarantees between Them, A Comparative Study in Civil Law, Dar Al-Maaref, Assiut, Egypt, 1987, p. 542.

4 - Nadia Mansouri, Financing Private Real Estate Promotion, thesis submitted to complete a master's degree, Faculty of Law and Political Science, University of Algiers, 2003, p. 34.

guarantor of the construction with the contractor, they had made a mistake in applying the law. The content of this decision considers the Real Estate Promotion and Management Office a public real estate operator<sup>1)</sup>.

### **3- The legal nature of the real estate developer's activity:**

The real estate developer is considered one of the persons involved in the real estate promotion activity, and the legislator has been keen to give him the legal nature that suits the profession legally assigned to him, as the legal nature of the person dealing in the real estate promotion differs between civil status and commercial status.

#### **A- The civil nature of the real estate promotion activity:**

According to the texts of Articles 13, 14, and 15 of Law No. 86-07 relating to real estate promotion, the Algerian legislator has given the civil nature to real estate promotion, saying: "It is not possible for legal persons subject to private law and described as traders to subscribe to carry out a real estate promotion operation in application of the provisions of the Commercial Code...", and explicitly preventing persons subject to private law and described as traders from subscribing to such operations. Therefore, the person carrying out real estate upgrade operations cannot be a merchant<sup>2)</sup>.

#### **B- The commercial nature of the real estate promotion activity:**

After the issuance of Legislative Decree No. 93-03 related to real estate activity, the legal nature of the activity of the real estate promotion operator is determined according to the objective of the real estate project. The real estate promotion operator is the one who completes or renews real estate

properties. The Algerian legislator considered, with the concept of violation, the real estate promotion operator who completes or renews real estate properties for the purpose of selling or renting them as a merchant. With the exception of those who carry out real estate upgrades to meet their own needs, or the needs of participants in that<sup>(3)</sup>, and his works are considered commercial, explicitly stated: "...Real estate promotion dealers are merchants..."<sup>(4)</sup>.

However, the real estate promotion dealer should have been considered an investor, as he benefits from the rights and privileges stipulated in the Investment Law. Compared to other investors, for example, the real estate promotion dealer is the only one whose rights to privileges are denied by the Investment Promotion Agency when constructing real estate properties for sale. Any investor who manufactures anything to sell has the right to benefit from an exemption from tax on the company's profits for a period of five years, except in the field of housing. As a result, the real estate promotion dealer is not considered an investor<sup>(5)</sup>.

### **Second: Distinguishing the real estate developer from those with similar professions.**

The real estate market is witnessing significant development in many countries, creating numerous investment and commercial opportunities in this field. Among the most prominent players in this sector are architects and contractors.

#### **1- Distinguishing a real estate developer from an architect:**

The architect is defined as: "The professional

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1 - Decision No.: 46748; issued by the Algerian Supreme Court on: 1/23/1991, published in the Judicial Journal, Issue 4, 1992, p. 31.

2 - Article 13/1 of Law No.:86-07; 4 March 1986; relating to real estate promotion, Official Gazette, No. 10 issued on: 5 March 1986, repealed.

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3 - Article 3/2 of Legislative Decree No.: 93-03; dated: 1 March 1993, relating to real estate activity, Official Gazette, No. 14, issued on: 3 March 1993.

4 - Article 3/2 of Legislative Decree No. 93-03; relating to real estate activity.

5 - Bousetta Iman, Private Real Estate Promotion in the Field of Housing in Algerian Legislation, a thesis submitted within the requirements of a PhD thesis in Law. Specialization: Business Law, Faculty of Law and Political Science, Department of Law, Mohamed Khider University, Biskra, 2016/2017.p.p.51-52.

who is entrusted with developing designs, drawings and models for the construction, maintenance and decoration of facilities and supervising their proper implementation. He is the one who carries out artistic design and supervises its proper implementation" <sup>(1)</sup>. The architect is always a natural person who relies on mental effort. As for the person dealing in real estate promotion, he can be a natural person or a moral person. The architect develops designs, drawings and models and supervises their proper implementation. The real estate developer does not interfere or contribute to the preparation of these works, but only supervises their implementation, as this is the responsibility of the architect. The architect also intervenes in monitoring the construction process upon assignment from the owner, or his legal representative, and on his behalf. The real estate developer is the one who takes the initiative and takes the primary care to complete the project without any assignment from others.

The architect practices a liberal, non-commercial profession, unlike the real estate promotion dealer, who is considered a merchant according to the law, except in exceptional cases specified exclusively <sup>(2)</sup>.

Finally, it can be said that although the architect's involvement in real estate activity is indirect, it has a great importance. Without him, the building property cannot be completed, and the real estate developer cannot engage in real estate activity without the architect's services and supervision.

## **2- Distinguishing a real estate developer from a contractor:**

The contractor is the person who is entrusted

with constructing buildings or establishing other fixed facilities based on the designs presented to him in exchange for a fee. The contractor can commit to completing the project himself, and he can also resort to other people to complete it <sup>(3)</sup>.

However, in all cases, the contractor does not take the initiative, even if he undertakes the executive work; that is, he undertakes the physical implementation of the project initiated by the real estate promotion operator and undertakes the main care for its completion in accordance with Law No. 11-04; which specifies the rules and provisions applicable to the real estate promotion activity. The contractor is any natural or legal person registered in the commercial register under the title of construction works activity as a craftsman or institution possessing professional qualifications <sup>(4)</sup>.

Therefore, the construction contractor is the one who undertakes, in agreement with the developer in exchange for a certain fee, to carry out construction, preparation or restoration operations <sup>(5)</sup>, and he may limit himself to undertaking to provide work only, provided that the real estate developer provides the means and materials that he uses or uses in carrying out the construction process.

He may also undertake to provide both the work and the materials. In addition, he implements all the designs drawn up by the architect under his supervision and in accordance with his instructions. The contractor may limit his undertaking to providing his work only, provided that the employer provides the material he uses, or uses it to carry out his work <sup>(6)</sup>.

The basic principle is that the contractor is an executive person, and this does not negate his

1 - Mohammed Hussein Mansour, Architectural Responsibility, Dar Al-Fikr University, Alexandria, 2006, p. 89

2 - Sarah Belkhiri, Kamal Assas, Real Estate Development Law Center, to obtain a master's degree, specializing in: Law, Faculty of Law and Political Science, Al-Bashir Al-Ibrahimi University, Bordj Bou Arreridj, 2021/2022, p. 9.

3 - Abdul Razzaq Hussein Yassin, previous reference, p. 419.

4 - Article 3/13 of Law No. 11-04 sets out the rules governing real estate promotion activity.

5 - Sarah Belkhiri, Kamal Assas, op. cit., p. 9.

6 - Article 550 of Law No. 75-58 containing the amended and supplemented Civil Code.

status as a technician or executive. Therefore, he is obligated to respect and follow the known technical specifications that conform, and to exercise the usual care for that. Accordingly, the judges assess his responsibility in the event that he carries out incorrect works, and the claim that his role is limited to implementing the designs and established instructions does not exempt him from responsibility <sup>(1)</sup>.

From the above, it can be said that the distinction between the profession of contractor and real estate developer is that the profession of the former is represented in embodying engineering designs designed by the architect, while the role of the real estate developer is embodied in providing all the capabilities and necessary materials for the contractor to perform his role in the construction process, in addition to coordinating the efforts of all parties involved in the construction process, even though the common characteristic between both the contractor and the real estate developer is It is the characteristic of a merchant that is given to it from the perspective of commercial law <sup>(2)</sup>.

## **The second axis: Legal controls for practicing private real estate promotion.**

In this part of the paper we will talk about the Substantive and procedural administrative controls for practicing real estate promotion, as well as the Financial controls for practicing real estate promotion.

### **First: Substantive and procedural**

1 - Hassan Mansour, Architectural Responsibility, Alexandria Publishing House, 1999, pp. 89-99.

2 - Article 2 of Order No. 75-59 dated: 26 September 1975, containing the Commercial Code (Official Gazette , No. 101, issued on: 19 December 1975). Amended and supplemented by Legislative Decree No.: 93-08 of: April 25, 1993 (Official Gazette , No. 27, issued on: April 27, 1993). Amended and supplemented by Order No.: 96-27 dated: December 9, 1996 (Official Gazette , No. 77, issued on: December 11, 1996). Amended and supplemented by Law No.: No.: 05-02 of: February 6, 2005 (Official Gazette , No. 11, issued on: February 9, 2005). Amended and supplemented by Law No. 22-09 dated: May 5, 2022 (Official Gazette , No. 32, issued on: May 14, 2022).

## **administrative controls for practicing real estate promotion.**

This section is talking about objective administrative and procedural administrative controls

### **1- Objective administrative controls for practicing real estate promotion.**

#### **a- Legal capacity:**

The Algerian legislator has authorized the practice of real estate promotion activities for every natural or legal person who enjoys civil rights and legal capacity to carry out commercial activities<sup>(3)</sup>; by referring to the legal texts regulating the commercial register <sup>(4)</sup>; we find that this capacity is proven by an official contract drawn up by a legally qualified public officer<sup>(5)</sup>; for every natural or legal person who enjoys his civil rights; He explicitly expresses his desire to engage in commercial activities in his own name and for his own account, or in the name of a legal entity, after ensuring that he is not the subject of any measure of loss of civil capacity. The contract proving the merchant's capacity is registered in the commercial register, under the supervision of the judge in charge of the commercial register, and he has full authority over everyone, unless it is proven to be invalid <sup>(6)</sup>, which was confirmed by

3 - Article 3/10 14/2 of Law No. 11-04 sets out the rules governing real estate promotion activity.

4 - Law No.: 90-22 dated: 18 August 1990, relating to the commercial register related to the commercial register, Official Gazette , No. 36, issued on: 22 August 1990.

5 - Article 324 of Order No. 75-58 dated: September 26, 1975, amended, supplemented and containing the Civil Code, (Official Gazette , No. 78, issued on: September 30, 1975). Amended and supplemented by Law No. 88-14 dated: May 3, 1988 (Official Gazette No. 18, issued on: May 4, 1988). Amended and supplemented by Law No.: 05-10 dated: June 20, 2005 (Official Gazette , No. 44, issued on: June 26, 2005), Amended and supplemented by Law No.: 07-05 dated: May 13, 2007 (Official Gazette , No. 31, issued on: May 13, 2007).

6 - Articles 2, 6, 9 of Law No. 90-22 of September 18, 1990, relating to the commercial registry.

Executive Decree No.: 12-84 <sup>(1)</sup>.

However, the legislator stipulated that anyone who wishes to practice the real estate promotion activity must be twenty-five years of age <sup>(2)</sup>, which is an age that exceeds the legal age of eligibility estimated at (19) years according to the Civil Code <sup>(3)</sup>.

It is noted that the Algerian legislator followed in determining this age what is known in professions, such as notary <sup>(4)</sup> and judicial report <sup>(5)</sup>; in an effort to unify these professions; of a professional nature. It is also noted that in choosing this legal age, the Algerian legislator may have wanted to spare its practitioners; Some of the obligations that their owners must perform, such as the candidate completing his studies on the one hand, and performing the duty of national service on the other hand.

#### **b- Nationality:**

Regarding this condition, Law No. 86-07 required that, in order to subscribe to a real estate promotion transaction, a natural or legal person must have Algerian nationality. Even for members of a legal person, the law requires that they allow every natural or legal person of Algerian nationality <sup>(6)</sup> while having the necessary legal

capacity to practice business. This condition, Algerian nationality, was not stated in Legislative Decree No.: 93-03; by practicing the profession of real estate developer <sup>(7)</sup>.

However, with reference to Law No. 11-04<sup>(8)</sup>, it was referred to Executive Decree No. 12-84, amended and supplemented by Executive Decree No. 13-96, which specifies the methods for granting accreditation to practice the profession of real estate developer. We find that a natural person who applies for accreditation to practice the profession of real estate developer must be of Algerian nationality, and a legal person must be subject to Algerian law. It is clear from this that foreigners are no longer allowed to practice the activity of real estate promotion<sup>(9)</sup>. However, the Algerian legislator, pursuant to Amendment No.: 19-243 which determines the methods of granting accreditation to practice the profession of real estate developer; Algerian citizenship is no longer required for a natural person <sup>(10)</sup>.

### **2- Procedural administrative controls for practicing real estate promotion:**

Entering the real estate developer profession requires obtaining accreditation and registering in the National Real Estate Developer Schedule.

#### **a- Obtaining accreditation:**

Accreditation is defined as the decision that

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1 - Article 4 of Executive Decree No. 12-84 specifies the methods for granting accreditation to practice the profession of real estate developer, as well as the methods for maintaining the national schedule for real estate developers. Modified and supplemented.

2 - Article 6 of Executive Decree No. 12-84 specifies the methods for granting accreditation to practice the profession of real estate developer, as well as the methods for maintaining the national schedule of real estate developers. Modified and supplemented.

3 - Article 40 of Order No. 75-58, containing the Civil Code, amended and supplemented.

4 - Article 4 of Law No. 88-27 dated: 12 July 1988, regulating notarization, (o.g, No. 28 of 1988), and Article 6 of Law No. 06-02 dated: 20 February 2006, regulating the profession of notary (o.g. Issue 14, 2006).

5 - Article 9 of Law No. 06-03 dated: February 20, 2006, includes the profession of judicial bailiff (Official Gazette , No. 14, issued on: March 8, 2006). Amending and supplementing Law No. 91-03 dated: January 8, 1991.

6 - Article 8/1 of Law No. 86-07 relating to real estate promotion.

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7 - Article 6 of Legislative Decree No. 93-03 relates to real estate activity.

8 - Article 19 of Law No. 11-04 sets out the rules governing real estate promotion activity.

9 - Article 6 of Executive Decree No. 12-84 specifies the methods for granting accreditation to practice the profession of real estate developer, as well as the methods for maintaining the national schedule of real estate developers. Official Gazette , Issue 11, February 26, 2012. Modified and supplemented.

10 - Article 2 of Executive Decree No. 19-243, which specifies the methods for granting accreditation to practice the profession of real estate developer. Official Gazette , Issue 55, issued on: September 15, 2019. Amending and supplementing Executive Decree No. 13-96 dated February 26, 2013, Official Gazette , No. 13, issued on: March 6, 2013. Amending and supplementing Executive Decree No. 12-84 op cit.

includes the approval of the competent administrative authority to enter the profession, and is considered an acknowledgment of the availability of the conditions for practicing it<sup>(1)</sup>.

The administrative authority competent to grant accreditation is represented by the Minister of Housing after the approval of a specialized committee that studies the file of the real estate developer requesting accreditation. The committee may also seek the assistance of any person who, by virtue of his jurisdiction, can assist it in its work. This credit is personal and cannot be waived and cannot be the subject of rent in any form. It is irrevocable, and the person concerned has decided to rely on it to carry out all the necessary formalities in order to register in the commercial registry<sup>(2)</sup>.

It is worth noting that the approval itself was in accordance with the two executive decrees, the first No. 12-84, and the second amended No. 13-96, which stipulate objective controls, such as nationality, for example, which was waived by Executive Decree No. 19-243 above. The regulatory texts also included procedural controls, such as submitting the file to the competent authorities of the Minister in charge of Housing, which is now submitted to the provincial directorate in charge of Housing by Executive Decree No. 19-243 above.

### **b- Registration in the National Real Estate Registry:**

In application of the provisions of Article 23 of Law No. 11-04 mentioned above, holders of accreditation legally registered in the commercial registry are registered in the National Real Estate Registry, opened to the Minister in charge of Housing. Registration in the National Registry culminates in the real estate registry submitting a

registration certificate. The registration certificate in the National Real Estate Registry is considered a license to practice the profession. It actually results in the real estate developer joining the Real Estate Promotion Guarantee and Mutual Guarantee Fund<sup>(3)</sup>.

The registration procedure in the National Schedule of Real Estate Promoters is a subsequent procedure for the real estate developer to obtain accreditation, and the ministerial decision issued on January 9, 2013 specified a model for accreditation and a model for a certificate of registration in the National Schedule of Real Estate Promoters<sup>(4)</sup>.

The National Schedule constitutes a permanent means of monitoring the entry and practice of the profession, as it monitors all real estate developer initiatives in real estate projects, and the administrative and disciplinary procedures to which he has been subjected, which suggests the strict monitoring provided by the real estate developer legal system. The real estate developer obtaining a certificate of registration in the National Schedule of Real Estate Developers is considered a complementary license to accreditation, as the real estate developer is then allowed to practice his profession. It also imposes the obligation to join the Mutual Guarantee and Guarantee Fund in the real estate promotion activity<sup>(5)</sup>, and determines the form and content of the registration certificate in the National Schedule of Real Estate Promoters are determined by a decision of the Minister in charge of Housing<sup>(6)</sup>.

It is worth noting that the real estate developer's affiliation requires the Fund to issue an affiliation certificate, which must bear his accreditation number and registration number in the National

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1 - Abdel Raouf Halwaji, The Legal System of Real Estate Development, Memorandum for Completing a Master's Thesis, Faculty of Law and Political Science, University of Algiers, 2014/2015, p. 56.

2 - Articles 5, 13, 14, 17 of Executive Decree No. 12-84 op cit.

3 - Articles 24 and 25 of Executive Decree No. 12-84 op cit.

4 - The ministerial decision issued on January 9, 2013 specified a model for accreditation and a model for a certificate of registration in the National Schedule of Real Estate Promoters.

5 - Article 25 of Executive Decree No. 12-84 op cit.

6 - Article 26 of Executive Decree No. 12-84 op cit.



Real Estate Promoter Schedule <sup>(1)</sup>. It is also worth noting that the real estate developer must provide guarantees of good conduct: as a merchant; in accordance with Law No. 11-04; it is necessary that he has integrity and good conduct. Accordingly, the profession of real estate promotion cannot be practiced by a person who has been subjected to penalties for committing some of the violations stipulated in this law <sup>(2)</sup>.

## **Second: Financial controls for practicing real estate promotion.**

### **1- The real estate developer must be a professional with sufficient financial capabilities:**

The real estate developer must pledge, through a standard honorary declaration, that he can provide the necessary financial resources to complete his real estate project or projects before starting them, which was confirmed in detail by a joint ministerial decision to prove sufficient financial resources to practice the real estate promotion profession <sup>(3)</sup>.

Law No. 11-04 added an important condition, which is that the real estate developer must be a professional. Professional competence, as defined by Executive Decree No. 12-84 <sup>(4)</sup>, means holding a postgraduate degree in the field of architecture, construction, law, economics, finance, commerce, or any other technical field that allows for carrying out the real estate developer activity <sup>(5)</sup>. If the real estate developer requesting accreditation does not

meet the conditions related to the aforementioned professional competencies, he must always and effectively seek assistance from a path that meets these conditions <sup>(6)</sup>. Real estate developers who have been practicing their activity for a period of 5 years upon the publication of this decree in the Official Gazette and who have actually achieved their real estate projects can obtain accreditation to practice the real estate promotion activity <sup>(7)</sup>. This is useful for the legislator to make the experience gained by the real estate developer one of the means by which the latter proves his professional competencies <sup>(8)</sup>.

### **2- Possession of shops for commercial use:**

A person wishing to practice the real estate promotion activity must have shops for suitable commercial use that allow for a decent and reasonable practice of the profession and are equipped with means of communication. The existence of these shops must be proven when registering in the National List of Real Estate Promoters <sup>(9)</sup>; since a real estate developer may be a legal person, every legal person in the form of a commercial company can practice the real estate promotion activity. In this context, Decree No. 12-84 stipulates the conditions that must be met by a legal person to practice the profession of real estate promotion, which are the same conditions required by a natural person, taking into account the legal nature of the commercial form taken by the legal person <sup>(10)</sup>.

### **3- - The necessity of joining the Mutual Guarantee and Guarantee Fund in real estate promotion:**

The first legislative text according to which the possibility of establishing the Mutual Guarantee and Guarantee Fund was stipulated, Article 31 of the Finance Law of 1985 No.: 84-21, stating that:

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1 - Article 3 of Executive Decree No.: 14-182; It specifies the conditions and methods for paying subscriptions and other compulsory payments by the real estate developer stipulated in the internal regulations of the Guarantee and Mutual Guarantee Fund for Real Estate Promotion.

2 - Article 20 of Law No. 11-04 sets out the rules governing real estate promotion activity.

3 - Joint Ministerial Resolution dated: December 6, 2012, proving sufficient financial resources to acquire the status of real estate developer, Official Gazette No. 2 issued on January 13, 2013.

4 - Article 6 of Executive Decree No. 12-84 op cit.

5 - Aqila Naoui, Legal Mechanisms for Improving Real Estate Promotion Activity in Algeria, Journal of Policy and Law Notebooks, Issue 19, June 2018, p. 772.

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6 - Article 6 of Executive Decree No. 12-84 op cit.

7 - Article 6 of Executive Decree No. 12-84 op cit.

8 - Aqila Naoui, op. cit., p. 772.

9 - Article 7 of Executive Decree No. 12-84 op cit.

10 - Article 6 of Executive Decree No. 12-84 op cit.

"Guarantee funds, or joint guarantees, shall be established according to needs, and through organization within all sectors of economic activity, which are allocated to guarantee their members with banks; so that they may obtain various credits....."<sup>(1)</sup>, but under the Finance Law of 1990, its name was changed, Guarantee Funds, or Joint Cost <sup>(2)</sup>, which was amended by Legislative Decree No.:93-01; Including the Finance Law of 1993; It is now described as: Mutual Guarantee and Guarantee Funds <sup>(3)</sup>.

It is a fund that was actually installed in August 2000, although its legal texts began with Executive Decree No. 93-01, related to the Finance Law, and before that its features appeared in the Finance Law of 1985, however, its appearance was with Executive Decree No. 97-406; which included the creation of the Guarantee and Mutual Guarantee Fund for Real Estate Promotion <sup>(4)</sup>, it is a public institution, exercising its duties; under the guardianship of the Minister in charge of Housing, The Fund has a legal personality, financial independence, is cooperative in nature, and does not aim to achieve profit <sup>(5)</sup>.

Some tasks were added to it, pursuant to Executive Decree No. 97-406 of 1997 above, which defined its detailed objectives, which are:

- Ensuring the establishment of guarantees and insurances that real estate developers are committed to when subscribing

- Substituting the acquirers, in the event that the credit is withdrawn from the real estate developer, and the construction of the buildings is completed through the commitment of another real estate developer; at the expense of the real estate developer who is in breach of his obligations, and instead of him; within the limits of the funds paid;

- Managing the affiliations of accredited real estate developers registered in the National Real Estate Development Schedule;

- Ensuring the follow-up and management of portfolio accounts; for advances paid by subscribers;

- Carrying out all commercial, financial and real estate operations related to its subject matter;

- Establish each branch and take all contributions related to its activity;

- Conducting all studies, publishing all information, and specialized publications aimed at enhancing the development of real estate promotion <sup>(6)</sup>.

The Fund may also be assigned additional activities within the framework of the tasks assigned to it, pursuant to the terms and conditions book approved by a joint ministerial decision between the Minister in charge of Housing and the Minister in charge of Finance <sup>(7)</sup>.

Accordingly, the Algerian legislator has obligated every accredited real estate developer registered in the National Schedule of Real Estate Developers to join the Guarantee Fund and mutual guarantee in real estate promotion explicitly in Law No. 11-04, which specifies the rules regulating the real estate promotion activity <sup>(8)</sup>, which was confirmed by its regulatory texts, especially the first two executive decrees No. 14-181 Which determines the conditions for the

1 - Article 31 of Law No. 84-21; dated: December 24, 1984; containing the Finance Law of 1985. Official Gazette , Issue 72; issued on: December 31, 1984.

2 - Article 121 of Law No. 89-26, dated 31 December 1989, containing the Finance Law of 1990. Official Gazette , Issue 3; issued on: January 3, 1990.

3 - Article 131 Legislative Decree No. 93-01 of the Finance Law. For the year 1993.

4 - Article 1 of Executive Decree No. 97-406, dated November 3, 1997, establishing the Mutual Guarantee and Guarantee Fund for Real Estate Promotion. Official Gazette , Issue 73, issued on: November 5, 1997. Amended and supplemented by Executive Decree No.: 14-180: June 5, 2014, Official Gazette , No. 37, issued on: June 19, 2014.

5 - Article 2 of Executive Decree No. 97-406, establishing the Mutual Guarantee and Guarantee Fund for Real Estate Promotion.

6 - Article 2 of Executive Decree No.: 14-180: June 5, 2014, Official Gazette , No. 37, issued on: June 19, 2014.

7 - Article 56 of Law No. 11-04 above.

8 - Article 55 of Law No. 11-04 above.

Mutual Guarantee and Guarantee Fund to replace the acquirer of real estate properties covered by the Real Estate Promotion Guarantee and the methods thereof<sup>(1)</sup>; and the second No.: 14-182; determines the conditions and methods for paying subscriptions and other compulsory payments by the Real Estate Promoter stipulated in the internal regulations of the Mutual Guarantee and Guarantee Fund for Real Estate Promotion)<sup>(2)</sup>.

The controls contained in the Terms and Conditions Book attached to Executive Decree No. 12-85, which included the model Terms and Conditions Book, which defines the professional obligations and responsibilities of the real estate developer<sup>(3)</sup>.

Failure to join the Fund, within a maximum period of 6 months after obtaining the accreditation, results in the temporary withdrawal of the approved developer<sup>(4)</sup>, and this withdrawal may turn into a final withdrawal if the real estate developer does not regularize his status with the Fund, within an additional period estimated at three months<sup>(5)</sup>.

It is worth noting that this obligation is predominantly financial in nature, as it determines the percentage of subscriptions for the real estate developer, if he is affiliated with the Fund. It is also worth noting that this obligation, pursuant to Executive Decree No. 97-406 above, was by way

of option<sup>(6)</sup>. It is also worth noting that the guarantee certificate is a mandatory insurance that must be written by the real estate developer with the Guarantee Fund and the mutual guarantee in the real estate upgrade. For each real estate promotion transaction in which the sale formula is within the framework of the sale on designs, this certificate must be attached to the sale contract on designs<sup>(7)</sup>.

## CONCLUSION

At the conclusion of this study, through which we tried to answer the problem that revolved around the impact of economic transformations on the practice of real estate promotion activities, it becomes clear that the Algerian legislator has opened the field of real estate promotion to private individuals in light of the economic trends it has adopted, and accordingly, many definitions of real estate promotion have emerged; Whether legal, jurisprudential, or judicial definitions, it is also clear that the real estate promotion profession differs from some professions that suspect him, such as architect And the contractor, and the real estate developer is considered an explicit merchant as stated in the texts of Law No.: 11-04.

This research paper reached a number of proposals, the most important of which is activating the role of the Supreme Council for the Real Estate Promotion Profession, and the necessity of reconsidering some contracts for real estate promotion activities such as preserving the right, in addition to reconsidering the financial restrictions for joining the Guarantee Fund.

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