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The Time to Assign Ownership in Forward Sale Sontract of Construction

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Abstract:

There has been a long-standing controversy between the authors writing for the law regarding the validity of signing a purchase contract concerning the under-construction buildings. All of the law systems have come to this general agreement that the objective of signing a sale contract is the seller's transfer of ownership to the buyer. Nevertheless, the law authors have been found having disagreements regarding the time and the quality that the ownership should be conveyed. The ratification of the forward sale contract of construction law in 2010 almost put an end to such disputes and the forward sale of the buildings under construction was considered as legally correct and seamless. Although there are yet these questions remaining that "when the ownership should be transferred in such transactions? Should the ownership transfer be taking place with formally establishing and signing a forward sale contract of construction and/or via the final title deed transfer after the building has been completely constructed?" The answers provided by the jurists to these two questions differ in many respects, some of whom know the ownership transfer as the direct and immediate effect of sale and some others, besides sale contract, necessitate other law actions to be taken in order for the ownership transfer to be fully actualized. Forward sale contract of a building is not a newly emergent contract and besides the general rules authenticate for the various types of contracts such agreements follow the specific ordains made in that code of law. In the current research paper, with an applied objective in mind, we are seeking to take advantage of a descriptive-analytical method and also we deal with the explication of the aspects and the limits of the law-related issues and the obligations that have to be shouldered by the forward seller and forward buyer and the exact time that the ownership should be transferred in the extant body of the law rules and regulations on apartment building's forward sale and the civil law and rules of procedure and registration of our country. Additionally, we are going to make transparent the ambiguous and controversial issue of the time for transferring ownership; thereby, try to clarify the extant ambiguities which have been allegedly found to be the basic contributing factor leading to the emergence of a great deal of bottlenecks and lawsuits for the parties of the forward sale contracts. The findings of the current study are expected to provide us with an efficient leap in sublimating the awareness in the parties interested in law-related field of study.

Keywords: Building forward selling, Forward seller, Forward buyer, Ownership transfer time, Price.

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1. Introduction:

The great problems prevalent in housing and buildings has urged the legislators to find an appropriate solution through enacting different laws and statutes to, maybe, bring about an ease on the extant difficulties. The last volition willed by the legislator has been the ratification of the forward sale contract of building in 2010.

It is worth mentioning that before the aforementioned law was enacted, the legislator, adhering more to the jurisprudential rules, avoided prescribing the properties under the authority of guardians which were qualified to be characterized by a certain specification, before them being created or constructed. Based on this, some of the authors consider the contents of the article 342 of the civil law³ as being related to purchasing a certain specific object⁴.

The law writers, each with various reasoning, have attempted to elaborate on the nature of such types of transactions with their own specific methods in order to be able to verify and then preserve its accuracy and also in order to get rid of the flaws which are accompanied with the unconstructed definite property purchase.

According to the articles 342 and 361 of the civil law regarding definite purchase agreements, the item to be purchased should be existent at the time of transaction. The apartment under construction is an example of definite property and it is therefore enumerated among the property under guardianship, but it has not been yet fully constructed and created. In this case, how can it be fully and straightforwardly characterized and specified in order to avoid the future claims of ignorance and loss? Because, essentially, the method of constructing and the masonries applied is of an effect on the quality of the subject of transaction which is going to be built in the future.

According to articles 22, 48, 47 and 46 of the registration act, conveyance of the registered immovable properties can solely be carried out after such items have been registered in the real estate offices and it is not following the example of the other unregistered movable or immovable properties which can be transferred of their ownership through signing normal contracts. So, essentially, the registered immovable property transaction registration operation is not seen as a formality at all, rather it is enumerated among the necessary pillars of the ownership conveyance along with the parties' will of authorship.

³ Article 342 of the Iranian civil law (the amount and the type and the specifications of the item to be bought should be predetermined and the determination thereof should be stated in weight or bushel or quantity or a unit of length or area or as observed by an expert in such matters.

⁴ Naser, Katuziyan, "special contracts", v.1, Enteshar corporation, 13th ed., 2015, p.293.

Being set on an applied objective, the current study is seeking to take advantage of a descriptive-analytical method and benefit from the contents of the statutory mandates and take the following assumptions into consideration to determine the quality of the contracts for forward selling and the exact time that the ownership should be transferred and the effects and the obligations which are imposed on the parties and, in doing so, it is looking for finding answers to the above-mentioned questions in the sections to come. Next, some subjects regarding the conceptualization of the under construction apartments forward sale contracts will be elucidated according to the law on building forward selling procedures, definite purchase and commitment to buy, and, then it has been dealt with a citation of some of the cases regarding the study background, contents on the future property purchase ownership transfer, the time and the way to transfer ownership in the form of customized exact property (customer-specific) and the exact property from a specified site, the ownership transfer time in the forward sale act and finally the discussion and conclusion sections will follow.

1.1. Study questions:

1. What is the quality of the apartment forward selling contract?
2. When will the ownership in forward sale contract be conveyed from the forward seller to the forward purchaser?
3. Can it be possible to convey the ownership through signing a formal forward sale contract or via definite conveyance after the building was completely constructed?
4. If there are discrepancies happened to be existing between the apartments' forward sale law and the civil law when transferring the ownership right, which one of these two should be prevailing?

1.2. Study hypothesis:

1. The nature of the forward sale contract follows the special contracts and is, accordingly, necessary.
2. Ownership is conveyed from the very moment that the forward seller and the forward buyer start acting adherently to the apartment forward sale act according to the forward sale law.
3. The ownership transfer in such contracts regarding the building site and the other extant parts takes place through signing a formal forward sale and the ownership transfer is suspended until the building is completed regarding the nonexistent and unconstructed parts from the forward seller part and liquidation of the building price from the forward buyer side.
4. As regarding the time for transferring ownership in the forward sale contract, because the recent specific law is more referenced regarding such issues and the civil law takes a still stance in this regard, thus it is the forward sale law which rules.

2. Theoretical principles and study background:

2.1. Forward sale contract:

Any contract bearing any title by means of which the formal owner of the land (forward seller) is committed to construct or complete a certain building therein and the aforementioned building unit shall be, with any use, from the beginning or while being constructed and completed or after the termination of the construction work conveyed of its ownership to the other party of the contract (forward buyer) is considered as a building from the perspective of the rules and regulations defined in this statutory law (forward sale contract law). According to the increasing expansion of the violations and the crimes in building forward selling and according to the necessity for preventing the forward buyers to be deprived of their own rights in purchasing residential housing and in line with decreasing the occurrence quantity of some of the crimes such as fraud and parallel to the enforcement of the paragraph 2 of the Act 158 of Islamic Republic of Iran's constitution and also aiming at purposes such as dejudicialization through setting preventive regulations, a new bill was also subsequently enacted in which there is an in-depth explanation of the concepts such as forward sale and forward buyer.

Forward seller, as well, is a legal or real person who will convey a share of an existing land and standing property at the time of signing a forward sale contract to the forward buyer and also s/he becomes committed to construct and deliver the building within a specified period of time.

Forward buyer is also a person who purchases in advance his or her share of the land and standing property at the time of signing the forward sale contract in return for paying an agreed sum of money. Of course, it has to be mentioned that the vice presidents and the vicar(s) of the forward seller and the forward buyer are liable to the above-mentioned definitions.

The guarantee date refers to a reasonable time period specified in the forward sale contract during which the forward seller becomes committed to remove any sort of flaws and deficiencies latent or vivid in the building structure without charging the forward buyer with any cost.

It is worth mentioning that the forward sale is of two types which are construction contract and completion contract, and they are characterized by the followings:

1. The contract is of a possessory type.
2. Forward sale is a consensual contract.
3. Forward contract can be set both in return for something or free of charge.
4. Forward sale is a binding contract.

2.1.1. The conditions of signing a forward sale contract of a building:

In apartment buildings' forward sale contracts the entire array of the general conditions should be observed according to the article 190 and the specific rules and conditions specified in the forward sale contract should be observed, as well. Thus, in such types of contracts we have two types of conditions:

1. General conditions which has been defined in the article 190 of the civil law.
2. Special conditions in which it has been determined that the forward seller should be the owner of the land or an interested party or the forward buyer should be the owner of the land, the forward sale contract should be definitely formal, the foundation of the building should have been laid at the time when the forward sale contract is going to be signed and the necessary documents indicating the foundation operation completion should have also been provided corresponding to the article 4 of the forward sale law, the eleven-fold paragraph of the article 2 of the forward sale should also be inserted in the contract, and, finally, the forward buyer should pay the price determined by the contract in installments consistent to the articles 11 and 13 of the forward sale law.

In case that any of the formalities mentioned in the form of statutory items and especially the three above-mentioned conditions are not fulfilled, the parties to the contract will find themselves confronted with new conditions in case of which the judicial procedure and doctrine chooses to hold a silent position but according to the article by Dr. Hussein Kaviyar regarding the conditions and terms required for signing a forward sale contract, for instance in case that the contract formalities are not satisfied by the parties, the forward sale is therefore lost of its effect based on the articles 3 and 4 of the forward sale law, particularly paragraph 4 of the article 4 of the forward sale law indicating the necessity for acquiring a confirmation letter from a supervising engineer reflective of the fact that the building foundation operation has been accomplished.

1. In forward sale contracts, if the paragraph 4 of the article 4 of the law is not observed the contract will be subsequently envisaged as invalid.
2. The forward sale contract can no longer be enumerated as bearing the terms and conditions of the forward sale regulations.
3. There is brought about a condition for penal administrative mandate. Also, in case that the articles 3 and 13 of the forward sale law, in this case because the contract takes effect in two stages, that is the first stage from the time a contract is signed which has been cited in the article 3 of the forward sale law and in the second stage taking possession of the apartment which is inserted in the article 13 of the law, are not observed the contract gets out of its

inclusion in the apartment forward sale law and it has to be placed under the general rules and regulations of the civil law.

2.2. Bey' (Purchase and Sale):

Article 338 of the civil law defines Bay (from the Arabic word Bey', meaning purchase and sale) as "taking the possession of the exact property in return for a specified thing". According to the definition, Mabi' (purchased object) is the subject of purchase. According to article 350 of the civil law (the subject of purchase can be partitioned or shared or a specified amount, or it can generally be a value divided into equal parts, or it can be in whole under obligation).

2.3. Promise to purchase (written promise):

It is among the vivid and clear examples of the private agreements widely used in the transaction routines. Promise to purchase or, in other words, a mutual promise to purchase which has become recently the common state of the procedures in the transactions and the law relationships and also in the courts of justice department and also it is known as "letter of intent to buy". Letter of intent to buy" is a written promise by means of which one of the parties promises to perform certain legal action in future⁵.

2.4. Study background:

Doctor Muhammad Reza Pirhadi in his book "ownership conveyance in purchase contracts" (published by Jangal Javdaneh, 2013) writes about the time for transferring the ownership in purchase contracts: "According to the article, the forward seller may become committed, in respect to the forward buyer, to construct a building from its outset or to complete a semi-constructed building within a specified time and there may also be agreed that the ownership of the subject of transaction, building unit, be transferred to the forward buyer while it is still undergoing construction works or when it is being completed or after the construction operation has been finished. If it is agreed that the building unit's ownership be conveyed to the buyer from the very outset of the construction work means that the buyer takes possession of the apartment space and it is therefore according to the share of the land the buyer has attempted to buy. If an agreement is reached indicating that the building unit's ownership be transferred to the buyer while the building is still undergoing the construction work means that the buyer should be given an objective right to take possession of each part which will be later on built therein. It seems that, according to the contents of the later articles, in case no such things as the above-mentioned items has been defined or in case the parties prefer to choose a silent position, the buyer will be enjoying an objective right to take possession of each part of the building apartment whose construction work has come to an

⁵ Muhammad Ja'afar Ja'afari Langerudi, "law terminology", Ganj-e-Danesh, 1999.

end and the parties can also explicitly make references to the same right within the format of the contract⁶.

Doctor Naser Katuziyan in his book “special contracts”, volume one (Enteshar Corporation, 2015), writes, regarding the apartment sales, “sales can be carried out in one of the two ways, each with its own specific difficulties:

1. Selling constructed apartments, this can be performed by the owner of the entire building or the owner of the apartment and the buyer of which can be the apartment tenant or any other third person who seeks residence therein or tries to open a new business or begin an occupation therein.

2. Selling an apartment which will be built in future, normally, it is performed through determining the position and the aspects and the specifications of the apartment on a map and the seller commits oneself to construct and deliver it to the buyer within a specified period of time or deadline⁷.

Doctor Mohammadi and Doctor Hussein Moqaddam in an article on the time for transferring the ownership in forward sale contract of a building law (the scientific and research journal of private law, 2012) write “in forward sale contract of a building, the ownership deed pertains to the standing property and the amount of the building which has been constructed and thus regarded as existing and it can, at minimum, include the foundation of the building all of which can be conveyed of their ownership right simultaneously with transferring the ownership of the superstructure. The legislator has determined in the article 13 of the building forward sale contract that with the building price installments being finished the ownership of the building under construction should be transferred. Because the building still under construction has no deed of ownership in its free standing form and the legislator has made it necessary in articles 13, 14 and 15 of the aforementioned law that the subject of the contract can be registered or definitely transferred after the completion of the construction operation and/or at least when 90% of the work has been accomplished. Now, which one of the above-mentioned items can be deemed as the most influential factor in ownership conveyance under the application of which the time for transferring the ownership from the forward seller to the forward buyer can be defined decisively and conclusively⁸?

⁶ Ownership conveyance in purchase and sale contracts (Dr. Muhammad Reza Pirhadi).

⁷ The Book “special contracts”, v.1, (Dr. Naser Katuziyan).

⁸ Article “The ownership transfer time in the forward sale contract of a building”, Doctor Sam Mohammadi, Doctor Seyyed Hosseini.

3. Ownership conveyance in purchasing a future property:

3.1. Purchasing a future property:

Purchasing a future property is a type of transaction at the time of signing a contract for which the subject of purchase is nonexistent but it is promised by the seller to be provided in future and delivered on the due date. The subject of the future purchase not only includes a state of a whole thing which is promised and has numerous examples-which is going to be created in the future- rather, it includes commodities which are required to be exclusively created for the buyer. This latter case, in itself, can be a movable or immovable property, such as an apartment unit.

3.2. Ownership conveyance in dealing a future property:

In case that the general commodity subject of purchase is promised to be sold with its specification of a certain type and amount, the ownership of the commodity in its objective meaning should be transferred to the buyer at the time that the commodity is specified. To put it more precisely, if the ownership of the commodity with the specifications mentioned is allocated to the buyer in an unconditional manner (without it being suspended to the fulfillment of another issue), then it can be conveyed. In purchasing a future property which has to be made for the buyer, the ownership of the commodity can be alienated to the buyer when the subject of transaction is fully and completely constructed. In the meantime, the parties can agree that ownership be transferred gradually during the construction work or the installation of the commodity parts.

3.3. Buying and selling of the future commodity in the form of a customized property (customer-specific) or an exact property from a special place:

Regarding the man-made artifacts, sometimes according to a special order by a customer, a type of commodity is solely and exclusively made for him or her. On the other hand, such type of artifacts may be of movable or immovable properties type. Movable artifacts which are built in the form of a buyer's special order, are thus solely and exclusively made for him or her, and are discussed in jurisprudence as "the purchase of a man-made artifact". Immovable artifacts exclusively ordered by the buyer have been mostly discussed in the format of purchasing the unconstructed apartments. Therefore, here, the purchase and sale of a future property is posited in the form of a customized property (customer specific) and the exact property or the subject of deal from a special place and these can be investigated in two parts including the survey of the accuracy of such a purchase regarding the two aforementioned types and the time and the method of the ownership transfer.

3.4. The legitimacy of the unconstructed apartment purchase:

Trading a future immovable property is mostly investigated under the title of "unconstructed apartment" or "forward sale contract of an apartment". When the subject of

purchase is for instance an apartment which has not yet been constructed, according to Iran's civil law regulations in which the subject of purchase apparently includes a special property, a generally obliged property and a generally specified property, there are issues proposed by the jurists in this regard. The first question put forth here is that in which of the above-mentioned cases should the subject of such dealing be classified? In other words, can an unconstructed apartment or an apartment which is going to be built in future be the subject of a general-term obligated transaction? In providing an answer to such questions, some have accurately said that in forward sale contract of an apartment commonly the position, the aspects, general plan, the area and the other apartment specifications are defined in the building map of the subject of contract and the seller promises to construct and deliver it within a specified period of time. Therefore, an apartment which has been built with certain specifications, according to its geographical position and aspects, cannot be an obligated general property and no other apartment like this one can be imagined and every apartment differs with the other ones. In the meantime, in some of the verdicts ordained in Iran's courts, the forward-sold apartments are considered as exemplary properties and the normative laxities and the people's ideas and notions have been considered as authentic regarding the apartments' similarities and in case that the seller has been found to have attempted to transfer the ownership of an apartment generally specified the seller is required to deliver an apartment of a similar type⁹.

Regarding the accuracy of trading an immovable property (apartment), it can be, summarily, added that when the seller has a possession and domination right over the land for making an improvement, also, through adhering to the legal constraints in creating improvements, then s/he may take actions in stepping into a transaction which includes the (existing) land and the creation and construction of an improvement therein are among the definite commitments given to the sellers. In such transactions, the buyer immediately gains domination and ownership of the special area of the land bought through signing an agreement (also, over the space in which the building unit subject of transaction will be built). Furthermore, regarding the destroyed part, it has to be mentioned that the building construction masonry may be special property or a generally specified property or a generally obliged property which will later on be specified after it has been procured and installed (as a definite commitment).

⁹ Hassan Alizadeh, "forward sale contract of an apartment", 1st ed., Mithaq Edalat, 2004, pp.35-37.

4. The analysis of the time and the method of transferring ownership in trading a future property in the form of a customized property (customer specific) and the exact property from a special place:

Transferring the ownership in trading a future property in France's law and Iran's civil law shall be exercised from the date that the subject of purchase has been specified¹⁰.

4.1. Ownership conveyance in trading man-made artifacts:

The conveyance of the ownership in purchasing the man-made artifacts regarding the movable and immovable (unconstructed apartment) properties are differently discussed.

4.1.1. Ownership conveyance in trading movable future property:

Regarding the future property trading it was previously mentioned that the subject of transaction is sometimes customized according to a special order by the buyer and the custom-made building is a partial property which is going to be made in future and it is customer-specific and sometimes the constructor or maker is an artisan which has a commodity under construction and the commodity is produced in a general form or as it is commonly used by the producers it is provided via the production lines and there are numerous orders placed by the buyers for such an item for sale.

In cases that the subject of sale is ordered by the buyer and it is made exclusively for the buyer, there is no doubt that with the completion of the manufacturing process, the subject of trade is determined and defined and it can be said that the ownership is transferred in respect to the whole item subject of the sales at this time.

4.1.2. Ownership conveyance in trading an immovable future property:

Some believe that despite the fact that the Iranian legislator in paragraph 1 of the article 362 of the civil law has pretended that in all sorts of trading the ownership conveyance does not necessarily take place with the selling of the commodity, for instance, in selling and buying unconstructed apartments, the ownership transferring of the subject of sale is not carried out simultaneously with the creation of an obligation and accepting it in the form of signing a contract; rather it has to be accomplished at the time when the subject of sale is determined and this determination of the subject of sale does not always happen through a single method and also, it is worth mentioning that the gradual ownership in the form of a conditional paradigm can be influential in our law system and if the ownership is suspended to the apartment being constructed, there is no barrier to accepting it in the form of part of the constructed apartments (semi-constructed)¹¹.

Moreover, it seems that in trading an immovable future property (apartment), firstly, at the time of transaction the seller is the owner of the preliminary kernel of the subject of sale (land

¹⁰ Muhammad Ja'afar, Ja'afari Langarudi, "the civil law and business law encyclopedia", v.1, p.508.

¹¹ Reza Velvion, "unconstructed apartment trading", the journal of law and politics research, (4):41-44.

or at least the space for constructing an improvement). In other words, the seller has the authority or the ownership of creating an improvement on a special piece of land and the transaction takes place in the form of a nonexistent property to be made in future as a subsequence to the existing domination or the ownership and the buyer, through signing a transaction contract, acquires the domination and ownership and an objective right in respect to the apartment unit space subject of the trading and the land therein as defined by the share the buyer is given of his or her special unit of building and because the apartment unit and according to the idea that the apartment unit is going to be built specifically for the buyer, thus with the construction of every part of the unit being traded an objective right in respect to that part will also be created for the buyer. However, the seller and the constructor are also given the right to take intervening measures during the construction work and with the completion of the apartment building being traded, the buyer's ownership over the subject of sale can be completely actualized for him or her in its objective right meaning and the parties' implicit volition to the aforementioned idea can be imagined and justified. In the meanwhile, the parties confirmation of the creation of an objective right with each part of the building being constructed can shut the door to any probable dubious issue.

4.1.2.1. Before the forward sale law ratification:

In Iran's law, the sale contracts, in general, without being in need of any other law operation, transfer the ownership from the seller to the buyer. Essentially, from the perspective of Iran's law system, sale contracts are nothing more than conveyance of ownership. The sale contracts being of a possessory nature in Iran's law system is advantageous resulting in the following two legal consequences:

Firstly, after a sale contract was agreed, neither the sellers' creditors can take possession of the subject of sale, nor the seller himself can delegate it to a third party.

Secondly, selling of one's own property is not incorrect.

4.1.2.2. After the forward sale law was codified:

According to the article 1 of the apartment forward sale law: any contract with any sort of title by means of which the formal owner of the land (forward seller) is committed to construct or complete certain building unit on the land and then convey the ownership of the aforementioned building unit with any sort of use from the beginning or during the construction and completion work or after the construction work is finished to the other party of the contract (forward buyer) is enumerated among the forward sale contract of a building in terms of the rules and regulations inserted in the above-cited article, so, according to the article, the forward seller may be committed, in respect to the forward buyer, to construct the building from the outset or complete a semi-constructed building within a specified period of time and also there is this other possibility that there may be reached the agreement that the

traded building unit might be conveyed of its ownership from the outset or during construction or completion work or after the construction operation is finished to the forward buyer. The agreement on the ownership being conveyed from the very outset to the buyer means that ownership over the apartment space and the share of the buyer of the land. Agreeing on the ownership of the transacted building being transferred during the construction work means that the buyer is provided with an objective right over each part of the building after it is created.

4.2. Trading a future property in the form of a whole:

Sometimes a future subject of sale is of a general and holistic state and the builder is a producer who is constantly producing a commodity for his or her customers and the orders are placed with such a seller and after the commodity has been built, the seller is required to determine certain example for the customer and deliver it to the customer. Some believe that if the ordered commodity follows the example of a whole commodity then it has to be considered among the short sales¹². In this regard, the short sale is considered as being identical to a general obligated whole. In this section, firstly, we have dealt with the accuracy or the invalidity of the same contract and then the time and the method of conveying the ownership will be investigated.

4.2.1. Surveying the accuracy of the future property sale in a general form:

Imamate jurists consider the short sales the subject of sale for which is nonexistent at the time of signing the contract with as being accurate and authentic provided that 4 conditions are satisfied (in spite of the general jurists some of whom regard such type of contracts as accurate and authentic on the condition that 5 conditions are met and some others require 7 conditions to be fulfilled)¹³. In case that the buyer asks an owner of an industry (manufacturer) to make a commodity for him or her and in the process of fabricating the commodity the manufacturer is required to use whatever the material is required as provided by himself or herself, and according to the specifications defined by the buyer, and the manufacturer accepts and acts as s/he is ordered, it is in fact some sort of a future transaction and it has nothing to do with the short sales¹⁴.

When the manufacturing of a certain commodity, with specified material and with defined characteristics, in an exclusive form for the buyer is ordered, it is an example of artifact

¹² Muhammad Mo'men Qomi, "Fabrication", the journal of Ahl Al-Bayt jurisprudence, Nos.11 & 12, 1997.

¹³ Al-Sheikh Ali Ben Muhammad Al-Qomi Al-Sabzevari, "the comprehensive review of the disagreements and agreements", 1st ed., Pasdar-e-Islam, Zamineh Sazan Zohoor-e-Imam Asr (may Allah hasten his reappearance), Qom, 2000, p.270.

¹⁴ Doctor Muhammad Ja'afar Langarudi, "the dictionary of studying the elements", civil law, criminal law, Ganj-e-Danesh, 2003, pp.425-427.

trading contract and if the ordered commodity is a general whole, it is considered as short sale contract and or it will be obligated¹⁵.

4.2.2. The time and the method of ownership transfer in trading a future property in the form of a general whole:

Selling of a future immovable property in Iran's law has been discussed under the title of the unconstructed apartment (immovable). In such a case there is this possibility that the parties may come to an agreement on the ownership conveyance that the ownership should be transferred with the construction of each part of the subject of sale.

5. When to convey ownership in forward sale law:

5.1. When to convey ownership in forward sale law in Iran's legal statutes:

Various law systems do not seem to have similar ideas regarding the time to convey the ownership in sale contracts and according to the type of the item being traded the time of ownership transfer differs, for instance, regarding the specified properties, the general specified property and the general obligated property, Iran's civil law through following the lead of Imamate Jurisprudence knows that the ownership should be transferred at the time when signing the contract and this is while many of the jurists have come to the realization that the time to transfer ownership in general obligated property is when the commodity is allocated or submitted. Regarding the future property, in cases that it is not an example of future sale or a short sale, the ownership is conveyed at the time that the price for the commodity has been fully acquired. And in case that it is not of a future type, the ownership is conveyed when signing the contract. The term "ownership conveyance" refers to the idea that an individual transfers an ownership which bears in itself a financial load to another one as a result of a contract being signed or due to a unilateral obligation in such a manner that the individual's own ownership is lost of its effect as soon as it is transferred and his or her own ownership is replaced by the ownership by another person(s)¹⁶. Ownership conveyance as intended by the above meaning has been long the focus of the various law systems and there are numerous ideas opined in this regard. The diversity of the ideas is to the extent that the international purchase and sale convention, 1980, has vested the authority of ownership conveyance in the internal regulations¹⁷.

¹⁵ Muhammad Mo'men Qowmi, "fabricated artifacts", the journal of Ahl Al-Bayt jurisprudents, Nos.11, 12, 1997.

¹⁶ Muhammad Ja'afar Ja'afari Langarudi, "law dissertation, v.4, Amirkabir, 1977, p.332.

¹⁷ Article 4 of the international sale and purchase convention, 1980: The regulations cited in the convention are solely suggestive of the method of signing sale contracts and the rights and the commitments which are created for the parties in signing such contracts and there are no specific relationships with the following issues, unless otherwise has been expressed:

- a) The validity of the contract or each of the conditions mentioned there in, or the validity of each of the relevant norms.
- b) The effect that might be exerted by the contract on the ownership of the commodity.

There are a series of general rules in Iran's law in relation to the time for transferring ownership regarding the immovable properties and it is in such a manner that transacting a building under construction is much more similar to or among the transactions related to the registered immovable properties and it has to be performed corresponding to the rules and regulations governing the registered properties transaction in the registry law including the articles 22, 46, 47 and 48 and the ownership transfer of such properties should be recorded in the registry offices in order to be enabled to take effect and become valid and legal.

5.2. The effect of price payment in transferring the ownership in forward sale contract of a building:

In Iran's law, determination of the price at the time of signing a contract is a must. That is because the article 339 of the civil law announces that "after an agreement is reached by the seller and the client regarding the subject of sale and the price thereof, the contract takes effect and is therefore accepted", so the sale contract cannot be effective legally and authenticate if the parties cannot come to an agreement on the price or if the price is not clearly spoken out¹⁸.

5.3. The effect of registration on the ownership conveyance in forward sale contract of a building:

As it was mentioned previously, the effect of registration, on registered immovable properties ownership transfer is among the main pillars of the transaction according to the articles 22, 48, 47 and 46 and the building forward sale contract, which obeys the rules and regulations provided for the same properties, should normally, be a function of the same decree and thus it cannot be excluded therefrom. The legislator, firstly, requires that the entire obligations should be fully adhered to and carried out and then the forward sale contract should be formally written and registered and, finally, the subject of the contract should be definitely conveyed.

5.4. The status of the building under construction:

Whatever was mentioned up to the present point was related to the ownership transfer of a constructed building or the land on which the building has been built or is going to be built. But despite the land discussed here, the semi-constructed improvement does not have a title deed. Therefore, at the time that the land ownership is conveyed to the buyer, due to the preexistence of the constructed part of the building (improvement), it will also be transferred to the forward buyer. Now, How and when the ownership of the remaining part of the building which is not yet constructed at the time of formally signing a forward sale contract and it cannot be, naturally, transferred along with the land should be conveyed?

¹⁸ Seyyed Hassan Imami, civil law, v.1, 8th ed., Jangal, 1992, pp.417, 426.

It seems that the contents of the article 13 of the above-mentioned law imply that at the time when signing a forward sale contract, the forward seller meanwhile transferring the ownership of the land and the existent constructed superstructure is obliged to construct the remaining parts of the building corresponding to the building plan and technical identification card of the building and finally after the whole price of the building is acquired from the buyer the ownership of the remaining part can be conveyed, accordingly. The forward buyer also favors the fulfillment of the same obligations and the complete construction of the building from the seller's side.

5.5. How to formulate title deeds for forward-sold apartment units:

In the aforesaid law, writing a formal title deed indicating the subject of forward sale has been devised in two different stages and/or two statuses. The first stage is, in fact, the very writing of the forward sale contract, but in a formal method. But, the legislator has required that the orders of writing the contract such as mortgage contract should be reflected in the title deed due to the reasons such as the relationship residing between the forward sale contract and the special property booked registration number and the summary thereof should be sent to the registry office. But, such a formal contract shall not remain stable permanently and after the entire array of the obligations are met and the definite title deed has been written, the legislator, corresponding to the article 19, renders the aforementioned deed invalid and therefore the parties are obliged to return it to the registry office where the deed was primarily written and signed. Therefore, along with the predefined contract which has been formally conducted, finally, the title deed of the building subject of the forward sale contract should be, in the second stage, written in a formal manner. In the next section we are going to investigate the issues related to the importance and the advantages of writing definite title deeds along with the way it should be conducted.

5.6. The effect of writing a definite title deed for forward sold building units:

Although the formal forward sale contract possesses many benefits but there is no doubt that the effects of the definite registration which are revealed after the completion of the building under construction will not be acquirable solely as a result of forward sale contract registration. Since with writing a formal forward sale contract the ownership and the objective rights of the forward buyer, which were occasionally found to be brittle and insecure without writing a formal title deed, now are rendered secure and stable. Moreover, before registering there is no possibility to take advantage of the privileges predicted by the formal deeds subject of the articles 22, 46, 47 and 48 of the registration law. Therefore, there is a definitely a distinct difference between the title deed of an apartment unit which is in a putative and separated form, pointing to the whole six dongs of the same apartment unit issued through it

being registered in the real estate notary offices and the formal forward sale contract of the same unit under construction.

5.7. The method of writing a definite title deed:

The transactions which take place in respect to the registered immovable real estates, writing transaction formal title deed and ownership conveyance in the registry offices for the purpose of reflecting it in the real estate notary offices are among the most important stages of the transaction which are also considered as the major areas of concern for the buyers. Nowadays, we are bearing witness to a great many of the claims in this regard as a result of sentences issued obliging the parties to prove their presence in the formal registry offices and writing and signing formal deeds and various sentences issued in the courts based on the articles 10, 219 and 223 of the civil law by the courts¹⁹.

6. Discussion and conclusion:

Forward sale contract of a building is a newly emergent area which besides it being governed by the contracts' general rules and regulations follows the decrees and orders particularly incorporated in the buildings' forward sale law. Such contracts, corresponding to the article 3 of the law, are regarded as the binding and registered contracts, since in the articles 8 and 16 of the law there are made references to the revocation option which pertains to the binding contracts. In the meantime, according to the article 3 of the law, such types of contracts can also be considered among the special contracts and writing a formal title deed is recounted as one of the main underlying premises of such contracts and full liquidation of the agreed price is also of a great significance and can exert important effects. Although the article 1 of the forward sale law, in defining the forward sale, expresses that the forward seller is obliged to construct or complete a certain building unit, but there is this dubious implication that the contract may be turned into something more of a contractual nature. But, corresponding to the article 13 of the forward sale law, the forward buyer gain ownership of the forward-sold building proportionate to the installments paid or in return for the price specified in the contract but if such an agreement (contract) was a contractual one, the ownership had to be conveyed when the property had been submitted to the forward buyer and/or when the title deed was signed after the construction work had been finished. In the meantime, according to the article 15 of the forward sale law, the forward-sold land and the superstructure cannot be confiscated and secured in favor of the creditors of the forward seller and this implies that the property is gradually built and its ownership will be gradually transferred to the forward buyer and such as this the property is part of the forward seller before it is being fully completed and its ownership conveyed to the forward buyer. In this

¹⁹ Mahdi Mir Shafi'eeiyan, "Filing a lawsuit for immovable properties", v.1, 1st ed., Hoghughdanan, 1996, pp.231-241.

way, the building forward sale contract can be considered as a special sale which has distinct rules and characteristics. In such contracts, ownership conveyance is faced with special status and the contract serves several functions. That is because the subject of ownership which has been inserted in the article 1 with the phrase “from the outset” can never mean an ownership of the entire building, because in such a case due to the infeasibility of actualizing the ownership as a result of part of the subject of contract being unavailable corresponding to the article 361 of the civil law, the title of the forward sale contract of a building will be turned unreasonable and insensible.

So, it has to have something to do with the existent parts which corresponding to the paragraph 4 of the article 4 and article 10 and 15 of the law includes the land, proportionate to the forward buyer share and the improvement which at its minimum incorporates the building foundation. Consequently, with writing and signing a forward sale contract in a formal manner and through adhering to the conditions predicted in the law, the ownership of the existent part can be transferred. On the other hand, part of the building is built and constructed in the interval between signing the formal forward sale contract up to the time that definite and final title deed is written, and thus not existent to be normally transferred upon signing a formal forward sale contract. But, according to the contents of the article 13 of the same law which realizes the forward-sold property ownership as being dependent upon the proportion of the installments paid or in exchange for whatever has been cited in the contract seems to be pointing to the same part of the building and the transaction actualization is suspended upon forward seller’s completion of the construction and the forward buyer’s payment or offering of what has been promised in the body of the contract. According to the idea that although the cause and the base of the ownership conveyance has been provided through its being clearly defined in the formal forward sale contract, the actualization of such conveyance of ownership practically depends and suspends on the building construction and the payment of the installment or exchange of what has been promised in the forward sale contract. In fact, the parties of the contract are assigned with obligations corresponding to the law or as a result of signing the contract. The forward seller is committed to construct and finally convey the definite title deed and the forward buyer besides the preliminary 10% is obliged to pay the installments or offer the exchange in return for the building price as defined in the contract.

Therefore, through the actualization of the recently-mentioned conditions the ownership conveyance will have nothing to deter it from happening. Also, after the termination of the building construction operation and with the accomplishment of more than 90% of the construction work, the final formal deed or the definite title deed will be formulated to the name of the buyer. But, the formal formulation of the title deed in this instant only paves the way for the existing ownership which has been previously agreed upon and it by no means

denies the actualization of the previously signed ownership which has taken place subsequently to signing the formal forward sale contract and observing the relevant conditions specified therein. In fact, the revocation of the aforementioned formal forward sale contract, as stated in the article 19, happens concomitantly with the issuance of the final formal title deed as a result of the registration actions and reactions which are dealt with in detail under the article 105 of the registration law procedures and it does not necessarily mean that the ownership has to be transferred to the buyer from the very moment the final formal title deed has been issued in regard of the subject of the contract.

In the end, it seems to the author of the current piece of writing that the ownership conveyance to the forward buyer takes place in the formal documents notary offices since the instant the forward sale contract has been formulated but corresponding to the articles 13, 3, 7 and 10 of the aforesaid law this conveyance of the ownership happens gradually till it reaches its completion point.

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