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Co-ownership charges are not due and payable if the construction of the acquired unit(s) is not completed

The rules governing co-ownership mandatorily apply to any erected building, the ownership of which is divided between several people in the form of units that comprise two components: the private areas and a share in common areas (cf. Article 1 of Law n°65-557 of July 10, 1965 establishing the co-ownership status of erected buildings).

As such, a co-owner has rights and obligations with respect to both the private and the common areas.

The main obligations imposed on a buyer of a unit in a building held in co-ownership is to pay a fraction of the co-ownership charges (i.e. costs and expenses associated with the running of the building such as insurance, cleaning and maintenance of the common areas, etc.). The criteria used for the calculation of the fraction of co-ownership charges to be paid by a co-owner are laid down in public policy provisions.

Requests for payment of co-ownership charges are managed by the *syndic de copropriété*, i.e. a property manager appointed by the association of co-owners.

When a person acquires a unit in an erected building, he/she knows the amount of charges that he/she will have to pay after the transfer of ownership since the seller usually gives him/her this information or the notary provides him/her with the statement of expenses delivered by the property manager during the preparatory phase that precedes the signature of the authentic deed of sale.

On the other hand, when a person buys an apartment off-plan, he/she does not know the amount of charges that he/she will have to pay.

Even worst, the buyer of an apartment off-plan could until now receive requests for payment of co-ownership charges from the property manager even though (i) the property was not yet completed for various reasons, and (ii) he/she had not yet taken possession of the acquired unit(s).

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This is because French case-law traditionally held that the set of rules governing co-ownership applied to a building when part of it becomes habitable and when it is held at least by two co-owners.

Consequently, the delivery of the first building units marked the starting point for the payment of the co-ownership charges by all the co-owners[1].

Yet, the date on which co-ownership charges become payable could be modified by the seller in the framework of the off-plan sale process. In this case, the contractual clause that conditioned the payment of the co-ownership charges upon the delivery of the units had to be complied with, failing which it would be considered as a distortion of the clear and precise terms set forth in an agreement[2].

In a decision dated January 22, 2014, the *Cour de Cassation* (French Supreme Court) ruled for the first time that the buyer of a unit in an off-plan building had no obligation to pay the co-ownership charges until his unit was completed[3].

This decision was published in the Official Bulletin and it may, therefore, reasonably be expected that property managers will no longer be entitled to request payment of co-ownership charges from buyers of off-sale units until such units have been completed.

However, it is appropriate to wait to see if further decisions will confirm this position.

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[1] Court of Appeals of Paris, February 8, 2001: JurisData n°2001-136074

[2] 1st Civil Chamber of the *Cour de Cassation*, November 19, 2009, appeal n° 08-14930

[3] 3rd Civil Chamber of the *Cour de Cassation*, January 22, 2014, appeal n° 12-29368

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