

Elements of Real Estate Development in Iraq

Raghad Fawzi Abed

Faculty of Law, University of Kufa, Iraq. Email: raghadf.altaai@uokufa.edu.iq

Kefaa Abdulzahra Qasim

Faculty of Law, University of Kufa, Iraq. Email: Kefaaa1977@gmail.com

Abstract

This article examines the influence of real estate developers on land use law, land use planning, and property law. The conceptual framework relies on third-phase institutionalism and socio-legal theory by examining actors and ideas that shape knowledge and practices of land use, planning, and property. In addition, this study addresses omissions in planning theory that disregard the role of real estate developers in land conflicts, particularly their influence on the legislative framework controlling land use. The idea is that property law is not only an objective set of principles that attorneys, judges, and courts interpret. It is also not a unified idea that safeguards private property rights. Instead, it is a complicated notion and institution that evolves via political processes, including mass movements, the exercise of power and influence by elite players, and deliberate actions by political actors negotiating different and opposing agendas.

1. Introduction

Even though a financial and housing crisis followed by credit limits, real estate crowdfunding has arisen as a new investment option for real estate markets. Crowdfunding, which was first meant to finance social initiatives via contributions or loans from a broad group of persons through Internet platforms, has evolved into a more sophisticated means of financing. It is the case with real estate crowdfunding, a kind of equity crowdfunding that promises to make housing investment accessible to retail investors, even though some risks have been identified that make these investments less safe. The real estate development process is not well understood. The profession of the real estate developer is more ambiguous, which reinforces the multifaceted nature of the concept of the real estate developer in terms of the prominent elements that can be observed if we are interested in the concept according to the personal competence of the developer, and the impact on the components of the real estate development activity. Hence, it became essential to identify those elements from the person of the developer himself, in the first branch, and from the point of view of his activity.

2. Items Related To The Person Of The Real Estate Developer

Analyzing the real estate developer's idea according to a personal competence perspective enables us to see whether

the developer, according to this standard, is acting under the title or professional cover or not.

Jurisprudence pointed out from the beginning of the emergence of the idea of the real estate developer pointed out that "the activity of the real estate developer can not be an incidental activity and must be a major activity usual, in other words, profession," and took this direction the Union of Real estate developers in France where its statute stipulated that the developer means the person who intervenes "in the usual way and within a permanent regulatory framework." If it is possible to perform the developer's tasks accidentally, this is a professional practice of the activity leading to the result of his qualification as a developer. An experienced real estate developer was described as a "privileged real estate developer."¹ From this perspective, the professional developer with distinction is not built for personal or family purposes but for purposes that fall within the scope of his skilled or experienced activity or even within his business activity, and this can be observed through the legislative definitions of the professional, where the Iraqi legislator defined him under the name of the processor in article 1 of the Consumer Protection Act as "every natural or moral person who is a producer, importer, source, distributor, the seller of goods or service provider whether Whether it's an original, an intermediary or an agent."²

The introductory article of the French Professional Consumer Act was defined as "a natural or legal person,

¹ Delphine pelet, THE concept of real estate developer private law French, Thèse de Dotorat from the University of Lyon, THE France, 2020, p 403.

² Considered: Article (1) of the Iraqi Consumer Protection Act No. 1 of 2010, corresponding to article (1) of the Egyptian Consumer Law No. 181 of 2018, in which the professional or professional legislator under the name of the supplier is defined as "any person who engages in

commercial, professional or literal activity that provides service to the consumer, produces, manufactures, imports or markets a commodity, in order to provide it to the consumer, deal or contract with it in any way, including electronic means and other means. It is also considered: Article 1 of Bahrain's Consumer Protection Act No. 35 of 2012.

public or private, who works for purposes that fall within the scope of his business, industrial, artisanal or agricultural activity, including when acting on behalf of and behalf of other specialists¹."

Therefore, it is the professional who appears in the usual professional manner, i.e., he has mastered his work through the practice and within a functional structured framework, perhaps a business or a production or service activity, which is for a fee. These criteria can be used to qualify the developer's activity as a professional activity practiced on the property through elements that are mainly related to the quality of the real estate developer himself as a professional and based on his objectives that fall within his activity as an investor of his speculative money. Thereby marketing his production From real estate units, to get the fruit of his activity interest, being a "person working for profit" on the one hand, and from the other being "a person with specialized skills," and this is what we will address in the first, and second of this branch.

First: A real estate developer is a person who works for profit and is usual.

The real estate developer performs his tasks in exchange for financial gains, whether cash or in kind, which leads us to the purpose or profitable purpose of professional activity, noting that the investment developer's activity is speculative by nature, pays capital, and competes with the possibility of making a profit, i.e., the main intention of achieving profit, the investment real estate developer "is looking for land that may not be valuable to buy and whether it belongs to the public or private sector and according to the legal mechanism Accordingly, ²profit is the result of the work of the developer and the interventionists he appoints, until some have noted that the concept of the real estate developer involves "important initiatives and various activities for profit, and its absence strips it of its *raison d'être* and deprives it of justifying the heavy responsibilities involved."³

In a decision of the French Court of Cassation, "in the absence of profit, the cooperative construction company, as the authority authorized by the contract, did not have the quality of the developers, and the simple remuneration of management costs was not sufficient to describe the profitability nature of the intervention, which justifies the special obligations arising from the establishment of the quality of the real estate developer, and therefore the court concluded that this company exactly was not a real estate developer and was not bound by the obligations stipulated

in articles 1792 and the following in civil law towards the other party to the contract."⁴ What is understood is that the real estate developer's activity must be profitable in the true sense of profit, by determining wages and in the form of financial or in-kind gains or profits obtained in exchange for the completion of development tasks, thus not including wages received on the occasion of management or compensation.

Thus, it is clear that the professional nature of the real estate developer's activity is a characteristic of his profitable purpose, as he cannot imagine the due diligence imposed on the developer and carried out without collecting profits, which is one of the fundamental objectives of the investment developer that he seeks to achieve.

The professional dimension of the real estate developer's activity in addition to its good purpose, but this activity requires a repetition of the work. As usual, i.e., the developer must practice it professionally through an organized and continuous project, where this repetition is based on an objective and structured plan consisting on the part of the real estate developer of a set of material works and legal behaviors necessary to practice his activity professionally aimed at real estate speculation⁵.

However, when is it considered or how the developer's activity can be considered a major activity, not accidental, and is there a threshold for the amount of work that can be agreed upon to reach the professional sphere?, for example, or clarification, the French Court of Cassation considered in a ruling issued on September 30, 2008, "the repetition of forty identical operations within two years made it possible to professionalize them."⁶ But this cannot be measured in the work of the real estate developer, taking into account the pace at which the work is being carried out, which leaves a long time interval between one project and another.

Part of the jurisprudence and some trends of the judiciary⁷, by default depend on the number of completed developments, assuming that the isolated process is not enough to grant professional quality and regardless of the synchronization of operations, two consecutive operations are a sign of regular professional activity, but this was not satisfactory⁸, as it does not take into account the importance of the process, this means that two low-importance and risk operations, for example, involve a few housing units that allow the developer to be seen as professional, in While one large-scale operation regulates a large number of residential, recreational and commercial workplaces, it would portray the organizer not as a developer but as an accidental organizer and this seems illogical, so they were

¹ See: Law No. 2014-344 of 17 March 2014 on consumption.

² Seen: Rod Khalid Mohammed, Legal Organization of the Real Estate Developer "Comparative Study", Doctoral Thesis, Faculty of Law, University of Baghdad, 2021, p. 21.

³ J.-L. BERGEL, S. CIMAMONTI, Fasc. 222 « Construction. – Liability for defects, defects and damages of the developer towards the subscriber", JCl. Construction-Urbanisme, LexisNexis, 2006, p. 4.

⁴ Cass. Civ. 3rd, 17 December 1997, No. 96-12030.

⁵ Seen: Dr. Walaaluddin Mohamed Ibrahim, source mentioned above, p. 40.

⁶ Cass. Civ. 1st, 30 September 2008, No 07-16878, Bull. civ. I, No 216.

⁷ J.-C. GROSLIERE, P. JESTAZ, Chron. 'Real estate development – Sale of immovable property', RDI, 1984, p. 193.

⁸ Delphine pelet, op. cit, p 413.

eventually forced to resort to the standard of the size of the operation carried out, and to appreciate the character of the real estate developer being professional or unfettered in connection with some economic behavior ¹.

Thus, according to the French Court of Cassation ², "from now on, the criteria for repetition and the importance of operations can be combined to distinguish the professional from others accidentally."

As it progresses, it is clear that, whether or not the real estate developer is considered a professional developer, a package of criteria is used regarding the number of operations carried out, their size, their technical level, the financial cost, and the impact on the general economy of the state, and this is a justification for the extreme economic importance of the industry and its leader in the economies of countries in general.

It should be noted that there is a term "getting the habit, which means that the organizer has the high ability to engage in activity through his professional personality associated with his economic behavior, and therefore this activity is professional, i.e., it has not been accomplished as an identity or a guard, according to the efficiency achieved and therefore is considered professional in the field of his intervention." ³

At the legislative level, The French Civil Code does not give priority to the usual practice of the profession of the real estate developer, where both assumptions deal with the accurate completion of real estate development work through the application of a unified legal system whether they are operating on a professional or accidental basis, where they are subject to the same obligations, particularly about guarantees of achievement, delivery, and hidden defects ⁴, due to the lack of legal rules governing access to the profession and the absence of the outlines organized to it ⁵. Therefore, the standard of physical application relating to the nature of the process and the tasks carried out without concern for the developer's experience in that area is achieved.

Although the law does not exclude the incidental practice of the activity, the developer is fully aware of the weight of the obligations placed on him, and this is taken into account; therefore, the developer cannot carry out the development work without an appropriate and permanent exercise framework that gives him a certain level of experience in his field of development. Indeed, this needs to be done for the developer interested in his activity and business reputation, which affects the most critical detail in

the process, namely the marketing of real estate units that are the result of the activity.

As for the availability of the professional dimension of the real estate developer's personality in Iraqi law and other laws in comparison, the legal situation is somewhat different from that of French law because there is a legal system governing access to the profession.

The availability of the professional dimension of the personality of the real estate developer and the elements contained in this dimension related to the activity of the developer, the donor authority to license the practice of the profession can determine the professionalism of the real estate developer in the implementation of development projects, based on the meaning of the professional developer i.e. "the characteristic associated with his person, which is required by the availability of special elements of economic and technical capabilities and the regularity and continuity required in the practice of activity" ⁶, and this is based on the nature of the professional personality In general, who, by virtue of his practice of a particular profession, possesses the economic, technical and cognitive superiority that qualifies him to provide services within the scope of his profession ⁷, so that the return of the activity is "profit" as a result of his professional personality associated with his economic behavior.

Thus, a real estate developer is a person who achieves the professional dimension through various activities in his specialized field, which enhances the organization of this economic profession under the laws of many countries, especially the subject of comparison.

Referring to these laws, we note the requirement of professional dimension as one of the conditions for obtaining a license to practice the profession, where the Bahraini legislator stipulated that he should be accompanied with the application for a license to practice the profession in support of the developer's implementation of real estate development projects and the statement of the field of development as a residential, commercial or industrial and the number of units implemented within the project during the last five years ⁸, but exempted the developer from this requirement if it is not available, and we believe that the availability of this condition is to trade between Developers make preference for the professional developer with distinction, by revealing the professional dimension and making it the standard of separation, in addition to allowing the developer to get the habit if he has

¹ J.-C. GROSLIERE, P. JESTAZ, Chron, op. cit, p 195.

² Cass. Civ. 3rd, 28 March 2012, No 11-12872, Bull. civ. III, No 54.

³ M. PEDAMON, H. KENFACK, Commercial Law. Commerçants et fonds de commerce, concurrence et contrats du commerce, 4th ed., Dalloz, 2015, p. 105.

⁴ P. MALINVAUD, P. JESTAZ, P. JOURDAIN, O. TOURNAFOND, Droit de la promotion immobilière, ème éd., Dalloz, 2014, p. 8.

⁵ Delphine pelet, op. cit, p 415.

⁶ Seen: Ward Khaled Mohammed, source mentioned above, p. 24.

⁷ Considered: Akram Mohammed Hussein Tamimi, Legal Regulation of the Professionals " Comparative Study in the Scope of Business", Master's Thesis, Faculty of Law, University of Al-Nahrin, 2008, p. 21.

⁸ Consider: Article (7) of Resolution 1 of 2018, on the license of the real estate developer, relating to Bahrain's Real Estate Regulation Act No. 27 of 2017.

the ability to engage in activity through his professional personality associated with his economic behavior.

The Egyptian legislator in the investment law did not directly address the requirement of professionalism. Still, he identified the person of the real estate developer in the means and based on the professional dimension of companies in their field, through the use of specialists and professionals in the economic, technical, legal, and other aspects on which companies depend in their area of competence, the referral of licensing mechanisms under the technical requirements contained in the competent laws, and the guide of procedures issued by the competent authority under the powers established in the field of real estate allocation. In addition, the Egyptian legislator set rules for the trade-off between investors when competing applications regarding the distribution of real estate. Hence, he decided that the exchange between those who met the technical and financial conditions necessary to invest in the points system according to the basis of the trade-off, which includes other technical or financial specifications,² and some argue that it was the first to be the trade-off between applications based on the precedent of business and the experience of the investor in vital areas as that element of the exchange, in addition to Technical and financial conditions are one of the most important elements associated with the investor³.

We believe that the approach of the Egyptian legislator is consistent with the principle of obtaining the custom in the event of the availability of the economic behavior of the developer's personality related to the technical level and financial cost. Therefore this activity is professional in that the operator did not complete his work as an identity or guard, but according to the efficiency achieved and therefore is considered to have the end in his field of intervention.

As for the Iraqi legislator in the investment law, he touched on the professionalism of the real estate developer through the procedures of granting investment leave and establishing projects in article (19) of the law and required the applicant to obtain investment leave to provide proof that they have done similar projects, whether through him or his partners, in addition to providing economic feasibility for the project⁴.

The fact that what determines exactly the professional dimension of the personality of the developer is the return of his profitable activity and the frequency of work and professionalism through ongoing organized projects, as this activity is based on an objective and structured plan

consisting of elements associated with the person of the real estate developer.

Second: a person with specialized skills

As a professional, the real estate developer is familiar with the practice of his functions, which leads us to question the extent of this professionalism and what distinguishes it from the concept of professionalism as a condition for acquiring the status of trader.

Since the real estate developer is accustomed, his activity gives him experience that contributes to his competence in his field of expertise, and efficiency, in turn, refers to knowledge. The latter gives the developer the right to make difficult decisions on issues related to his precise competence. In this sense, professionalism here revolves around experience, know-how, and specialization, a broad concept.

The meaning of professionalism characterizes professionalism as a condition for acquiring the status of a trader, as the latter depends primarily on the repetition of the practice of the profession or activity from time to time⁵.

As for the meaning of professionalism of the developer, repeating the practice of the profession as a criterion for professionalism requires regular activity and continuous and uninterrupted continuation of the competence, experience, and knowledge of the field of strict specialization⁶.

Thus, the developer's professionalism in this broad sense is more comprehensive and complex, as the people to whom these personal skills gained from the organization and uninterrupted continuous continuity are significantly lower than those who are professional under the commercial meaning.

According to this broad meaning, the professional is "a person who is very proficient in complex techniques, and who has a great deal of skill and knowledge in his field of specialization." In⁷ this sense, the professional title of the developer mark and guide belonging to knowledge that is an element or characteristic associated with the personality of the developer, and gives this property priority to the real estate developer because he has professional mastery leads to providing technical and economic expectations very

¹ Consider: Article (19/II) of the Egyptian Investment Law No. 72 of 2017.

² Consider: Article (63) of the Egyptian Investment Law No. 72 of 2017.

³ Seen: Dr. Samiha Al-Qalyubi, Legal Foundations for Investment Projects, Arab Renaissance House, Cairo 2018, p. 151.

⁴ Consider: Article (19/II) of the Iraqi Investment Act No. 13 of 2006 amended.

⁵ Considered: Dr. Fayez Naeem Radwan, Principles of Commercial Law, I1, Arab Thought House, Cairo, 1993, p. 28.

⁶ Seen: Akram Mohammed Hassan al-Tamimi, source mentioned above, p. 21.

⁷ Delphine pelet, op. cit, p 417.

accurately which makes customers trust him to dominate Risks give it predictability and prevention, which justifies its tolerance of process risks in terms of its mastery of market volatility, demand forecasting and adaptation to economic and technical conditions.

The professionalism of the real estate developer reflects the idea of "professional excellence in his specialty." However, the developer's efficiency must be comprehensive to the scope of his multi-tasking competence, mainly in the legal, administrative, and financial fields. In addition, the level of this efficiency must develop along with the movement of the development of construction techniques through the continuous organization of different real estate development processes¹.

According to this perspective, this process is becoming more complex daily as the developer's activity requires constant knowledge and organization so that the practice is not occasionally spaced apart.

It is clear that the job of the real estate developer requires and necessarily the use of a real professional specialist with a deep knowledge of the economic, technical, financial, administrative, and legal aspects, where the developer is supposed to be specialized in real estate affairs, master the volatility of the market, anticipate demand and adapt to economic conditions, and must follow developments and improve its operations and all aspects according to these developments, in addition, the developer must be competent at the legal level by respecting the rules governing the profession and its relationship with the beneficiaries of its production. Real estate, as well as those that determine its relationship with all parties involved in the development process.

The French Court of Cassation recognized in a recent ruling whether the real estate developer specializes in real estate or construction. However, this distinction has provoked widespread controversy, as the court acknowledged that "the real estate developer was a real estate specialist and not a construction specialist, so he should have been considered excessive in the face of the construction specialist involved in the development process, which follows cannot benefit from the requirement of restriction of liability, based on article 131.1. L, from the Consumption Act."²

The naming of the developer as "unprofessional" seemed to raise the question of being, in fact, responsible for the intellectual tasks required to organize the process, which logically includes negotiating and settling contracts and therefore acting within the framework of his professional activity, since the court's interpretation of the prohibition of unfair conditions based on his conduct in front of construction professionals and the exclusion of professional from him in this context, which is necessary for the

development process and at the heart of the tasks delegated to the developer and directly associated with his activity, has led to the protection of the developer Unprecedented, in an essential and vital area and at the heart of the process, where he considered it in a position not to assess the consequences and scope of the requirement that limits the insurance coverage of the entrepreneur³.

"His profession remains constructive, as it is far from being placed in the same position of weakness and ignorance as a real consumer, and adopting the concept of changing engineering, as uncanonical in construction and, on the contrary, in real estate, this, in turn, does not enhance legal security," he said⁴.

However, in a ruling issued on November 7, 2019, the Supreme Judicial Authority confirmed the desirability of separating the professional qualities of "real estate and construction, stressing that the second cannot emerge from the first as much as the field of construction requires knowledge as well as specific technical skills distinct from those required in the field of real estate⁵management."

If this interpretation has the advantage of taking into account the specificity of each activity, it is due to the unprecedented protection of the developer, and for a reason, apart from the legal, administrative and financial aspects of the process, the developer relies on skilled workers for technical aspects related to design and implementation, and although the developer inherently possesses the relevant technical knowledge, this professionalism in real estate matters allows him to impose as a professional in the management of the project for the construction process, not a skilled experienced for aspects related to design and implementation, since the judiciary focused on this The element in terms of the requirement in the direct contract association between the developer and the construction professionals involved in the real estate process, and therefore provided him with protection from this aspect by excluding the requirement to limit liability for construction professionals for the benefit of the developer, not on obligations related to the progress of the work and other guarantees within the framework of its relationship with the beneficiary.

Therefore, the developer investing in the real estate field must be understood as a real estate professional whose competence is indisputable in legal, administrative and financial matters, but for the technical level, it is different compared to the construction specialist despite being a regular contributor in the construction sector, but for them is not at all a "construction professional" which makes it possible to distinguish him from designers and executors. Indeed the developer is generally considered a professional in the real estate field but not necessarily professional in the construction of real estate because of his activity. Therefore, it is not about the professional knowledge required for the construction specialist. However, in some instances, the

¹ Delphine pelet, op. cit, p 419.

² Cass. Civ. 3rd, 4 February 2016, No 14-29347, Bull. civ. III, No 905, RDI 2016. 290, obs.B. BOUBLI.

³ Delphine pelet, on. cit, p 422.

⁴ S. MOREIL, «La SCI promoteur immobilier, un éphémère non-professionnel », LPA, n° 133, 5 July 2016, P 17.

⁵ Cass. Civ. 3rd, 7 November 2019, n° 18-23259.

developer may be classified as a construction professional if they have the technical expertise to justify it. Still, this doctrinal trend is less potent at present¹.

Therefore, the real estate developer, according to these data, is the leading actor in the technical, legal, administrative, and financial aspects, which makes him a professional in the field of real estate, but he is not specialized in the field of construction compared to the construction specialist "skilled workers" only others, so he has specialized competence in all vital functions of the industry as a regular and continuous contributor which earns him the required skills that develop his professional personality and relate to it, and distinguish from the professionals of construction in the technical field, but this came To provide special protection for him and his clients without affecting his commitment and guarantee of the entire process towards the beneficiaries acquiring real estate units.

Thus, it is important to have efficiency as an essential element related to the person of the real estate developer. However, the concept of this element differs in the laws governing the profession of the real estate developer between those who are meant to possess a higher degree with practice in a particular field of specialization such as architecture or construction or that are related to real estate development work and related² to it, some of whom have satisfied them with the skill and experience generated by the organized practice, such as the Iraqi legislator in the investment law, but did not elaborate. He established the precedent of the work and experience required only through jobs similar to the quality of the activity³. It is what the rest of the laws in question followed, although somewhat different⁴. On the part of the French legislator, the increased responsibility of the developer has led to his role in increasing the level of efficiency and specialization expected of the interested developer according to the mandate of the common interest.

3. Elements related to real estate developer activity

The organization and the increasing development of the construction process and increased the responsibility of the developer to increase the efficiency and specialization expected of it has led to the formation of a unique nature and purpose for the activity of the real estate developer, which means assigning the real estate developer-specific tasks related to his activity exclusively. This activity, by its nature, is related to several elements of material and legal,

so detailing those elements is necessarily better for understanding the concept of the real estate developer.

We will therefore address the material and legal elements relating to the activity of the real estate developer, first and secondly, from this branch.

First: physical elements

Real estate development is objectively defined as an activity of a real estate nature⁵, in which case the developer's activity falls primarily on real estate, so there is no doubt that the administrative work of the real estate developer relates to the construction work dedicated to the production of new goods "real estate units" and the content of these works does not stop at the establishment of the new ones, but also the development and transformation of those that already exist.

Thus, the activity of real estate development is limited to the construction of new forms or the modernization of the existing ones. The resulting real estate units can be used for all types of uses and according to the purpose of construction. This activity has material elements that make it a real estate activity development in particular, where the real estate developer is inseparable from the real estate nature, which takes the form of the construction of new buildings and the implementation of substantial renovation works. Still, as a result of the gradual development of construction work which led to the diversity of its activities and methods of intervention in the real estate sector In this context, the real estate developer had to develop the field of other businesses supporting "development, maintenance, and management" in addition to his main activity "construction, renovation and rehabilitation," which we will address in the following detail:

Construction, renovation, and rehabilitation activities.

The real estate developer is inseparable from the real estate nature and, as we have provided, which takes the form of the construction of new buildings and the implementation of substantial renovation works, thus limiting his activity to real estate, which enters into the structure by nature under a material standard of stability and installation on the ground, where the property is defined as "everything has a stable so that it can not be moved or converted without damage, including land, construction, planting, bridges, dams, mines, and other real estate objects." Still, the French legislator did not know the

¹ Delphine pelet, op. cit, p 423.

² One of these laws is the Syrian Development and Investment Regulation Act, which required the founders of the private real estate investment and development company to have more than half of them have a scientific qualification of at least a university degree or its equivalent in one of the disciplines directly related to real estate development work, in addition to requiring the availability of a higher degree as well as experience in the working apparatus of the real estate developer, considers: Article

(9) of the Executive Regulations no. 5410, issued in accordance with the Syrian Real Estate Development and Investment Act No. 15 of 2008.

³ Consider: Article (19/II/C) of the Iraqi Investment Act Qom 13 of 2006 amended.

⁴ Considers: Article (63) of The Egyptian Investment Law No. 72 of 2017, and Article 7 of Bahrain's No. 1 Resolution 2018, on the license of the real estate developer.

⁵ Delphine pelet, op. cit, p 477.

property by nature, but His palace was on the ground and the buildings¹.

The building is considered real estate whenever it has a foundation in the land so that it can only be separated from it by demolition, and whenever the building merges into the land according to the standard of stability count a property, whatever material used in the construction, for any purpose whatsoever and whether it is built above ground or in its interior. Therefore buildings, bridges, tunnels, and trenches are considered real estate².

The building includes its structure and its complementary parts, which are considered to supplement and can only be completed by its existence. Therefore, the house is considered property in all its constituent parts, whether in its walls, floors, doors, or windows, as it is an integral part of the construction, although it can be removed³.

It relates to real estate development processes related to buildings by their nature, and therefore the facilities that are built above ground without merging them so that they can be moved from one place to another without any damage because they are not considered real estate but transported⁴, such as iron or wood buildings ready and assembled and equipped in a workshop or factory before being transported to the site.

Construction is usually understood as "the process consisting of assembling and arranging different materials or parts to form a real estate unit and function"⁵ this term refers to the "physical act of construction," which is broad in terms of those who do so, the performance of the construction contractor or the performance of the executing engineer or the version of the real estate developer, the latter our focus in this regard, but for this activity is "work done," and this explains the physical nature of this activity of "planning and completion"⁶ From where the developer began to choose the land and develop the appropriate design and function of the property, based on the instructions and regulations imposed by the competent administrative authorities in this regard⁷.

In its real estate activity, the real estate developer may resort to developing an existing building through substantial renovation work as part of his physical activity.⁸ The French legislator identifies renovations within the real estate developer's framework other than maintenance or

regular repairs as "a significant modification of existing structures, expansion of construction and major rehabilitation work and inability to retail between the list and the new." At the same time, the court relies on the standard of cost of work under the opinion of a specialist "legal expert."⁹

The Iraqi legislator also went on to include renewal or rehabilitation among the activities that the developer can start within the framework of his real estate investment activity and in all sectors and through a specific legal process¹⁰.

From the preceding, we find that the developer is engaged in a material activity located on a property by its very nature related to construction work. If the developer is known primarily for these works, he was not far from the renovations or rehabilitation. Within specific legal criteria, these are the essential material elements that occupy most of his activity in the field of his development intervention.

Additional development and maintenance activities

The construction process is in two phases; the first: preliminary includes the development and development of the land itself, where some developers supervise or take over the work of developing the ground, this phase refers more specifically to the allocation of land and the installation of infrastructure of paving and preparing roads leading to the land, installation, and delivery of water and sanitation and other necessary services that make the land eligible for construction and housing, and the development of the land and development is among the essential material activities that constitute real estate¹¹ development. The second phase is as we have provided for the construction and construction of real estate units, including the development of concrete foundations, the construction of structures, and the conduct of final finishes to the full completion and delivery.

"Developers who sell plots with major services, but they do not build and construct construction, they are not developers strictly speaking," he said¹². Still, the developer will likely add development activity on a secondary basis, including many, especially in integrated development companies. However, this is less frequently used by

¹ Art. 518-1. Civil Code, "the land and land buildings are immovable by their nature".

² Seen: Dr. Mohammed Labib Shanab, Atef Abdel Hamid Hassan, Lessons in The Theory of Truth, University House, 1993, p. 285.

³ Seen: Walaa al-Din Mohamed Ibrahim, source mentioned above, p. 18.

⁴ "Everything can be transported and converted without damage, including money, offers, animals, agencies, bananas and other transported objects," considers Article 62/2 of the Amended Iraqi Civil Code No. 40 of 1951.

⁵ Delphine pelet, op. cit, p 21, <http://www.cnrtl.fr/definition/construction>.

⁶ P. MALINVAUD, B. BOUBLI, Chron. "Architectes, Entrepreneurs et Techniciens", RDI, 1988, p. 463.

⁷ Consider: Article (14/III) of the Iraqi Investment Act No. 13 of 2006 amended.

⁸ Delphine pelet, op. cit, p 483.

⁹ Cass. Civ. 3rd, 4 April 2013, No. 11-25198, Bull. civ. III, No. 45.

¹⁰ Seen: Article (10/III/G) of the Iraqi Investment Law of Justice.

¹¹ Delphine pellet, op. cit, p 489.

¹² J.-L BERGEL, S. CIMAMONTI, JCI. Construction-Urbanisme, LexisNexis, 2006, p. 29.

individual developers who use land development developers and provide them with critical life services.

Developers are committed to maintaining the real estate units produced and according to the custom purpose, and this may be directly or by assigning specialized technicians, where maintenance activity is an obligation on the real estate developer during the life of the work and equipment used in the process starting from the delivery of real estate units. Maintenance, considered essential in professional buildings, corresponds to all routine maintenance work carried out to maintain the condition of the building or prevent the disruption of a piece of equipment. A standard classifies maintenance activities according to their nature by "distinguishing in particular between preventive and corrective maintenance, depending on its importance from simple to more complex procedures."²

The importance of this activity lies in maintaining and strengthening the owner's real estate assets, improving professional operation for professional structures, and ensuring users' safety, health, and comfort.

From the preceding, it is clear to us: the activity of the real estate developer is characterized by its limited objectives, and its services relate to real estate in particular and identification, whether new buildings will be built or listed to be converted and developed, in addition to these services, which are mainly directed, the developer must add other activities, whether preliminary or complementary and on a secondary basis, such as land rehabilitation development, necessary maintenance, and all these elements, whether essential or secondary, related to the real estate developer's physical activity of the process.

Second: Legal elements

This activity includes the reliance of the real estate developer on the organization of his real estate project, and in this scope falls on him to achieve this project to conclude contracts with various parties, whether they are direct participants in the development process or others, such as contracts for construction contracts and land development services and preparation, and with financial institutions to develop a plan to finance his project, and this during the period of the project from the beginning to the full completion and delivery³.

The most important part of this activity is the conclusion of real estate development contracts for sale or investment leases with the acquirers of real estate units and in various forms, whether after completion or before completion and here begins a new task of the real estate developer, which is

the task of marketing to achieve the sale, which is now a specialized activity organized⁴.

To clarify this aspect of the developer's activity, we will summarize its typical functions in two consecutive phases:

- 1- the stage of the establishment of the process, and
- 2- the follow-up phase of the process.

1 - Operation activity

Before the real estate developer begins construction and construction work, he must meet many of the interrelated and successive legal requirements in the context of real estate issues, where there is a set of legal procedures that the developer must implement in this context, after appointing the land to develop it and according to its intended purpose, in this period and before the start of implementation the developer is responsible for collecting and fulfilling the legal, administrative, financial and even technical conditions necessary to launch the project, where this period is called the term "assembly"⁵ In fact, it means assembling all the required elements in order to achieve the result, which is entirely proportional to the preparation period before the completion of the construction work, the developer in this period remains active throughout the process as his skills and experience are mobilized in particular during this introductory period, which determines the achievement of the project and intersperses the assembly period with different stages to be detailed.

First: The economic feasibility of the project

By analyzing the real estate market and according to the specialized purpose of the property, through several steps from identifying the appropriate development area, studying supply and demand immediately and in the future with the most fantastic accuracy, and ending with the knowledge of competing developers in its field, where through these steps the developer can determine the feasibility and economic return of the project⁶, as it is an investment project that needs financial spending to produce the origin of the capital invested with the expected financial benefits over a specified period, thus considering the economic feasibility of the project as the first The legal elements to be available to obtain a practice license, indicated by the majority of the laws governing real estate development⁷.

Second: Obtaining the property

According to the previous steps, the real estate developer buys or rents the land to be built on it, according to the legal

¹ Seen: Dr. Walaaluddin Mohamed Ibrahim, source mentioned above, p. 32.

² I. SOYER, H. DIXNEUF, J.-P. SEGRETAI, *La maintenance des bâtiments en 100 fiches pratiques*, Le Moniteur, 2014, p. 11.

³ Looking: Nawa Akela, *Legal Regulation of Real Estate Responsibility in Algerian Legislation*, Doctoral Thesis, Faculty of Law, Amohamed Bouguerra University, Algeria 2018, p. 69.

⁴ Seen: Dr. Walaaluddin Mohamed Ibrahim, source mentioned above, p. 32.

⁵ Delphine pellet, op. cit, p 489.

⁶ Seen: Dr. Walaaluddin Mohamed Ibrahim, source mentioned earlier p. 29.

⁷ Article (19/II/B) of the amended Iraqi Investment Act No. 13 of 2006, the Egyptian legislator implicitly pointed to the technical economic feasibility as one of the legal procedures for obtaining the license, as well as the Bahraini legislator, considers: Article (22) of the Egyptian Investment Act No. 72 of 2017, and Article (20) of the Bahrain Real Estate Regulation Act No. 72 of 2017.

mechanism followed in the laws governing this profession¹.

There are multiple legal images of the developer obtaining land property to invest it and in all forms of real estate development, where some laws specify the pictures by which the property necessary for investment development projects is disposed of, and these pictures are "sale, rent, rent ending with ownership, license, participation in the project," and this is either at the request of the developer, or an invitation or announcement from the competent administrative authorities under the provisions of the law².

The real estate developer may have access to land free of charge or for a small fee in state-owned real estate³. In addition, governments usually turn to help address housing problems, providing land to the developer free of charge or cheaply in exchange for certain conditions related to prices and suiting the financial requirements of citizens, or for other development purposes, provided that developers have particular financial and technical needs and specific monetary guarantees under the law.

Third: Architectural designs and designs

The real estate developer develops the appropriate architectural plans and designs for the property and its purpose in the light of the regulations and instructions adopted by the competent administrative authorities and in coordination with the licensing donors⁴.

Fourth: Funding plan

The financing plan means the sources of project financing. A guarantee must accompany it from an accredited financial institution⁵. One of the following sources, namely but not limited to "developer-specific bank balances representing all of the bulk of the project's financing, is reserved for financing and is released according to completion ratios and with notice from the licensing donor's administrative authority, funded as financial or banking institutions with the guarantee of financing each or part of the project, and as it can be part of The sources of financing of the project are the proceeds of the investments of his investment project if it is implemented in stages or the proceeds of his other projects."⁶

2 - Follow-up activity

This stage of the process is undoubtedly no less important than its predecessor, as it contains everything prepared by the developer and it is "a big task that the

developer has to do during the completion of the process" where it considered the reason for the existence of his profession⁷, and extends the task of the professional developer to management and supervision of the site and is intended to supervise the legal, administrative and financial on the site, as his activity at this stage boils down to the management of legal relations with various crafts and the anchoring of contracts contracts and all kinds of types while monitoring the implementation of the work In general and within a contractual framework, it deals with comprehensive management, it is directed to the performance of contracts contracts in all its forms to ensure compliance with the origins of art in construction and within its contractual framework to ensure completion and delivery within the specified schedule, manages coordination between the professionals involved in the process and checks the quality and conformity of the work committed within its contractual framework, in addition to completing and achieving the purpose of the project accompanied by various stages summarized in the following.

First: legal control of the operation's accounts

The legal role played by the developer at this stage constitutes the central aspect of his activity is "Treasurer of construction operations"⁸, i.e. pays for the services of companies agreed upon contracts, where the real estate developer is one of the persons who is entitled to deposit in the escrow account and withdraw from it according to the completion rates by notice of the competent administrative authority, and defines the guarantee account as "a bank account in the name of the real estate development project deposit amounts from the developer and depositors and is allocated to build and implement the development project"⁹ It is clear that this legal account is the origin of its existence to deposit any cash in order to support the financial position of the real estate developer in front of the administrative authority granting the vacation on the one hand and in front of the buyers of real estate units on the other, as real estate projects are usually financed by cash flows through three basic tributaries, the first of which is the investments of the real estate developer himself, then

¹ Consider: Article (10/II) of the Iraqi Investment Act in force, corresponding to article (59) of Egypt's influential investment law.

² Considered: Articles (4), (5) of System 6 of 2017, on the sale and rent of real estate, state land and the public sector for investment purposes and lying on them based on the Iraqi Investment Act No. 13 of 2006 amended, and Article (58) of the Egyptian Investment Act No. 72 of 2017.

³ Consider: Article (9/VI) of the amended Iraqi Investment Act and Article 60 of the Egyptian Investment Act in force.

⁴ Consider: Article (19/II) of the amended Iraqi Investment Act, which the Bahraini publisher considered one of the legal documents to be available to obtain the license,

considers: Article (20/II) of the Bahrain Real Estate Regulation Act No. 27 of 2017.

⁵ Considers: Article (19/no/b) of the amended Iraqi Investment Act and Article (20/a) of the Bahrain Real Estate Sector Regulation Act.

⁶ This is in accordance with the instructions of the Iraqi National Investment Authority, which is addressed to provincial investment bodies by the number (s/1070) on June 12, 2016.

⁷ Delphine pellet, op. cit, p 547.

⁸ Ibid., p 540.

⁹ Considered: Article (1) of Bahrain's Real Estate Regulation Act No. 27 of 2017,

the proceeds of sales, and finally bank financing when needed¹.

Second: Marketing the project

The rationale for the developer's operation lies in the marketing of its real estate products through the actual investigation of the exchange process, and this is done through many functions, the most important of which are in the field of real estate marketing, technical services, warranty, distribution outlets, customer selection, and finance².

Initially, the real estate developer markets his project himself without resorting to intermediaries specialized in the process, but at present, the marketing of buildings has become a specialized activity gradually, especially under the influence of the laws governing this profession³, which require special experience in this field, some developers absorb the marketing function when acting as a seller "he works for himself." The developer can market his project through real estate brokers and act, in this case, real estate broker as a representative agent of the seller, "real estate developer," Real estate marketing is thus defined as "a set of integrated legal activities performed by the competent enterprise to facilitate exchanges."⁴

The majority of the laws on real estate development have authorized the developer to market his project in whole or in part through a real estate broker based on an agreement between them or a brokerage contract⁵. the real estate broker is considered one of the parties involved in the real estate development process⁶. But he can not carry out mediation work without prior authorization from the competent authority and falls on him based on the brokerage contract, a set of obligations, the most important of which is the deposit of the amounts of real estate units sold in the account of the guarantee of the project exclusively⁷.

Marketing is, therefore, one of the essential legal elements of the process, which is the purpose sought by the real estate developer, as it ensures through successful marketing that it is targeted to many customers, whether in sales or rentals, considering that the real estate developer is seeking to transfer his cash capital in a real estate product, ensuring through marketing and selling, interest with the origin of the capital invested.

Third: Use of the lease and purchase contract by the developer

The real estate developer may use some contractual measures that can facilitate the acquisition of property for buyers with poor credit, or in cases where the developer

cannot sell his real estate production, he can still benefit from them by rent. According to the different destinations of the leased real estate units, for example, a residential, commercial, or industrial lease, and can also take this initiative in the event of future completion, a contract resulting from a complex nature that links the lease to the sale where the lease can be considered as Accompanied by a promise of unilateral sale or confirmed sale preceded by a lease⁸, where the developer eventually undertakes to complete the completion of the real estate unit and hand it over to the tenant for use and use, they are two contractual periods that follow each other.

The jurisprudence created several definitions of the future sales contract, and was defined as "a complex legal system consisting of some legal rules derived from the traditional forms of commercial contracts and characterized by some characteristics derived from the combination of legal rules"⁹ and was also defined as "a long-term lease process that ends with the right to choose the tenant to buy or not taking into account the installments paid."¹⁰

From the preceding, it can be said that the study of the concept of the real estate developer necessarily means the expression of the distinctive elements of the activity of the real estate developer, which is closely and fundamentally linked to the tasks carried out in the process of real estate development, it facilitates the understanding of this concept and the detection of a mysterious and sophisticated personality, through many ambiguities between the real estate developer and other actors involved in the process, which have none of the professional quality compared to the developer, and this quality makes it possible to identify it as it acquires On the ground, he oversees the design and implementation of the process according to the custom purpose, which is determined by the quality of the activity, resulting from the specificity of this concept allowed to highlight the qualities of the developer as a manager, leader, and entrepreneur for the real estate development process.

4. Conclusions

This article discusses the dependence of the real estate developer on the organization of his real estate project. In this context, it is his responsibility to achieve this project by concluding contracts with various parties, whether they are direct participants in the development process or others, such as contracts for construction contracts and land development services and preparation, and with financial institutions to develop a plan to finance his project, and this

¹ Seen: Dr. Amr Taha Badawi Mohammed, source mentioned above, p. 161.

² Seen: Dr. Walauddin Mohamed Ibrahim, source mentioned earlier p. 32.

³ Delphine pellet, op. cit, p 546.

⁴ Seen: Same previous source, p. 32.

⁵ Considered: Article (35) of bahrain's real estate regulation law.

⁶ Seen: Dr. Amr Taha Badawi Mohammed, source mentioned above, p. 42.

⁷ Seen: Dr. Sandus Hamid al-Jubouri, source mentioned above, p. 102.

⁸ Delphine pellet, op. cit, p 436.

⁹ Seen: Dr. Fayez Naeem Radwan, Finance Lease, I2, Egypt, 1997, p. 35.

¹⁰ Seen: Dr. Mustafa Rushdie, Monetary and Banking Economy, University House, Egypt, 1985, p. 444.

throughout the development process. By analyzing the real estate market and according to the specialized purpose of the property, through several steps from identifying the appropriate development area, studying supply and demand immediately and in the future with the greatest accuracy, and concluding with the knowledge of competing developers in its field, the developer can determine the project's viability and economic return, as it is an investment project that requires financing. According to the vast majority of legislation regulating real estate development, the essential legal requirements for obtaining a license to practice. The real estate developer may access land in state-owned real estate for free or at a nominal cost. Governments typically provide land to developers for free or at a low cost in exchange for certain conditions related to prices and economic conditions of citizens, or for other development purposes, provided that developers meet certain financial and technical requirements and offer specific monetary guarantees. The legal role played by the developer at this stage is "Treasurer of construction operations," i.e., pays for the services of companies agreed upon contracts, where the real estate developer is one of the persons who is entitled to deposit in the escrow account and withdraw from it according to the completion rates by notice of the competent administrative authority and defines the guarantee account as "a bank account in the name of the guarantor in the amount of the guarantee." The purpose of this legal account is to support the financial position of the real estate developer in front of the administrative authority granting the vacation on the one hand and in front of the buyers of real estate units on the other, as cash flows typically finance real estate projects through three basic tributaries, the first of which is the real estate developer's investments, followed by the cash received from the sale of real estate units. Finally, the money received from the sale of land. In cases where the developer is unable to sell his real estate production, he can still benefit from them through rent, and according to the different destinations of the leased real estate units, such as residential, commercial, or industrial, and can also take this initiative in the event of future completion. Companioned by a promise of unilateral sale or a confirmed sale preceding a lease, in which the developer eventually agrees to complete the construction of the real estate unit and hand it over to the lessee for their use and occupation, they are two contractual periods that succeed one another.