



# NAVIGATING THE OFF-PLAN CHALLENGE: CONTRACTUAL ISSUES FOR GHANAIAN PROPERTY DEVELOPERS

**Managing Delays, Cost Volatility and Buyer Defaults Through Careful Contractual Planning.**

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Off-plan sales have become an important feature of real estate development in Ghana. For developers, sales made before completion can provide an important source of project funding and reduce reliance on conventional financing.

For purchasers, an off-plan transaction can provide an opportunity to acquire a property at an earlier stage of development.

The arrangement, however, also creates contractual risks for both parties. Construction may take longer than anticipated. The cost of materials and labour may change during the development period. Exchange-rate movements can affect the cost of imported inputs, while regulatory measures, supply-chain disruptions and other events may affect construction schedules. Developers also face the possibility that purchasers may fail to make agreed instalment payments.

These risks make the drafting of a sale agreement particularly important. An off-plan agreement should not merely record the purchase price and payment schedule. It should also establish a clear contractual framework for dealing with foreseeable changes and unexpected events.

Five critical areas demand attention:

## **1. Buyer Default and Payment Protection**

A purchaser's failure to make scheduled payments can have significant consequences for a development. In an off-plan transaction, instalment payments may form part of the developer's anticipated cash flow for construction. A prolonged payment default can therefore affect the developer's ability to meet project commitments while the relevant unit remains tied to the defaulting purchaser.

The agreement should therefore provide a clear procedure for dealing with payment defaults. A properly structured provision must address:

- The date on which an instalment becomes due.
- The consequences of late payment.
- Any applicable contractual interest.
- The form and timing of a default notice.
- A reasonable period within which the purchaser may remedy the default.
- The circumstances in which termination may occur.
- The treatment of amounts already paid; and
- The developer's rights following termination, including any right to resell the unit.



Particular care should be taken with provisions that seek to retain substantial portions of monies paid by a purchaser. Any proposed deduction, administrative charge or forfeiture should be expressly addressed in the agreement and considered in the light of applicable law and the circumstances of the transaction.

The objective should be certainty. Both parties should understand from the outset what will happen if the agreed payment schedule is not followed.

## 2. Cost Escalation and Price-Adjustment Mechanisms

Developers cannot assume that a price set today will remain economically viable throughout the construction period. A development may take several years from initial sale to completion. During that period the cost of cement, steel, fuel, labour and transportation may change materially. A completely fixed price places the risk of such changes primarily on the developer.

One possible contractual response is a carefully drafted price-adjustment or fluctuation clause. Such a clause should not give the developer an unrestricted power to increase the purchase price. Instead, it should identify:

- The circumstances that may trigger an adjustment;
- The categories of costs that may be considered;
- The evidence required to demonstrate the relevant increase;
- The methodology for calculating an adjustment;
- Any applicable cap or threshold;
- The notice to be given to the purchaser; and
- The purchaser's rights where the adjustment exceeds an agreed threshold.

The more objective the mechanism, the less room there is for disagreement about whether an adjustment is justified.

The parties may also consider whether particular components of the price should be treated differently. For example, a contract may distinguish between costs that are fixed and costs that are particularly exposed to exchange-rate or imported-input movements.

The central consideration is that the allocation of cost risk should be expressly agreed rather than left to assumptions.

## 3. Force Majeure and Delayed Completion

Delay is one of the most significant issues in an off-plan transaction. A purchaser may make financial arrangements on the assumption that a property will be completed by a particular date. A developer, however, may encounter events outside its reasonable control that affect the construction period. This makes the drafting of force majeure and excusable-delay provisions important. Depending on the transaction, the agreement may identify events such as:

- Natural disasters and severe weather.
- War, civil unrest, or labour strikes.
- Sudden government or import restrictions.
- Severe, industry-wide shortages of critical materials.
- Major utility or infrastructure failures.



The clause must mandate immediate written notice, detail mitigation steps, and automatically extend the completion date by a justifiable window. This contractual protection is distinct from the statutory doctrine of frustration, which carries a much higher legal burden to prove.

#### 4. Delay, Termination and Refund Arrangements

When an off-plan project is delayed, the purchaser may seek to terminate the transaction and recover amounts already paid. From the developer's perspective, an immediate requirement to refund numerous purchasers could create substantial liquidity pressure, particularly where the funds have already been applied to the development.

The sale agreement should therefore address the consequences of delay before the transaction is entered into. The contractual framework may include:

- A contractual completion date.  
The agreement should identify the anticipated completion date while making clear the circumstances in which that date may be extended.
- An extension mechanism.  
The agreement should specify circumstances that may justify an extension and the procedure for notifying the purchaser.
- A long-stop date.  
Where appropriate, the parties may agree a final date after which additional contractual rights arise if completion has not occurred.
- Termination rights.  
The agreement should identify when either party may terminate following prolonged delay and the procedure for exercising that right.
- Refund arrangements.  
Where a refund becomes due, the agreement should clearly state the amount to be refunded, any legally permissible deductions and the applicable timeframe.

A carefully structured provision can provide greater certainty than leaving the consequences of delay entirely to subsequent negotiations. At the same time, contractual provisions should not be drafted on the assumption that a purchaser's statutory or other legal rights can simply be excluded by agreement.

Furthermore, developers must align these terms with the Real Estate Agency Act, 2020 (Act 1047). Act 1047 regulates developer conduct, marketing standards, and consumer protection. Contracts cannot simply write away a buyer's statutory rights under the guise of freedom of contract.

#### 5. Exchange-Rate Risk and Foreign-Currency Pricing

High exposure to imported material costs makes exchange-rate volatility a significant risk. To hedge this, many developers quote prices in US Dollars (USD) or demand foreign currency payments. This measure is subject to the legal restrictions governing foreign-currency pricing and payment in Ghana.

Under the Foreign Exchange Act, 2006 (Act 723), pricing, invoicing, or receiving payments in foreign currency may be restricted unless expressly authorised. The Bank of Ghana's Notice No. BG/GOV/SEC/2025/26 addresses unauthorised foreign-exchange transactions, including foreign-currency pricing and payments in specified contexts.



A compliant contractual response may involve a carefully drafted currency-indexing mechanism. Instead of simply denominating the purchase price in USD, the contract can state the price in Ghana Cedis (GHS) and, where legally permissible, link specified adjustments to an objective external currency benchmark. The clause should clearly define:

- The Reference Rate: the applicable official or otherwise contractually agreed Bank of Ghana exchange-rate source.
- The Indexing Formula: how the Cedi payment adjusts based on currency movements.
- The Valuation Date: the exact date on which the relevant rate is determined.

Because foreign-exchange directives may change, developers should audit their payment mechanisms against the regulatory requirements applicable at the time of the transaction.

## Contractual Resilience Is About Risk Allocation

In an off-plan development, the contract is part of the project's risk-management framework. It should therefore be designed with the same care as the financial and construction arrangements supporting the development.

An off-plan transaction is a mutual leap of faith. The developer risks shifting costs and timelines. The buyer risks capital on an unbuilt structure.

A resilient contract must therefore resolve these tough questions before they turn into expensive lawsuits:

- What happens if the buyer stops paying?
- What happens if inflation spikes material costs?
- What happens if a supply chain crisis halts construction?
- When exactly does a buyer earn the right to cancel?
- How are refunds structured to protect developer liquidity?
- How do we hedge currency risk legally under Bank of Ghana rules?

Clarity at the beginning prevents chaos at the end. In off-plan development, a contract is a vital risk-management asset. It deserves the exact same engineering care as the architectural blueprints and the financial models.

## SELECTED LEGAL AND REGULATORY REFERENCES

- Legal Profession (Professional Conduct and Etiquette) Rules, 2020 (L.I. 2423).
- Contracts Act, 1960 (Act 25).
- Real Estate Agency Act, 2020 (Act 1047).
- Foreign Exchange Act, 2006 (Act 723).
- Bank of Ghana, Notice No. BG/GOV/SEC/2025/26 — Notice on Unauthorised Foreign Exchange Transactions (27 August 2025).
- Bank of Ghana foreign-exchange reference-rate publications.

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