



## BUYING SECTIONAL UNITS IN KENYA: NAVIGATING CHARGED LAND, DEVELOPER OBLIGATIONS, PLAN VARIATIONS, MISREPRESENTATION AND PURCHASER PROTECTION

### A Guide to the Legal, Regulatory and Commercial Risks Affecting Residential, Commercial and Mixed-Use Sectional Developments

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*By Real Estate, Development & Built Environment (REDBE) Practice*

#### EXECUTIVE SUMMARY

The Sectional Properties Act, 2020 has transformed property ownership in Kenya by facilitating the issuance of sectional titles and strengthening the rights of unit owners. While sectional developments present attractive homeownership and investment opportunities, purchasers remain exposed to risks including delays in title issuance, undisclosed encumbrances, defective construction and unauthorized alterations to approved development plans.

Against this backdrop, this CM Regulatory Alert examines the legal framework governing sectional developments in Kenya and highlights the key protections available to purchasers, the obligations

imposed on developers and financiers, and the legal consequences that may arise from non-compliance with statutory requirements.

#### UNDERSTANDING SECTIONAL OWNERSHIP IN KENYA

A sectional unit is an individually owned unit within a larger development, coupled with a proportionate share in the common property. Common examples include apartments, maisonettes, townhouses, office suites, retail units, business parks and mixed-use developments.

Unlike traditional land ownership, where a person owns an entire parcel of land, sectional ownership allows separate ownership of individual units while



preserving collective ownership of common property. Common property includes all areas and facilities that do not form part of a unit, such as access roads, parking areas, landscaped spaces, recreational facilities, staircases, lifts, utility infrastructure and security installations.

Ownership of a sectional unit is evidenced by a Sectional Title issued under the Sectional Properties Act, 2020. Depending on the tenure of the land, a Sectional Title can either be a Certificate of Title for freehold property or Certificate of Lease for Leasehold Property.

Importantly, a purchaser acquires not only ownership of the unit but also legally protected rights in the common property, governance structures, and the overall development scheme. Any actions that materially affect these rights may expose a developer to legal liability.

#### **LEGAL AND REGULATORY FRAMEWORK**

The acquisition, development, financing, and ownership of sectional units in Kenya are governed by an extensive legal and regulatory framework comprising the Constitution of Kenya, 2010, the Land Registration Act, 2012, the Land Act, 2012, the Sectional Properties Act, 2020 and the Sectional Properties Regulations, 2021, together with the Law of Contract Act, the Consumer Protection Act, 2012, the Competition Act, 2010, the Physical and Land Use Planning Act, 2019, the National Construction Authority Act, and applicable County Government planning and development regulations.

Collectively, these laws regulate land ownership and registration, sectional title issuance, planning and development approvals, construction standards, financing arrangements, consumer protection, governance of common property, and the rights and obligations of developers, financiers, and unit owners.

#### **IMPORTANCE OF PROPER SALE DOCUMENTATION**

Section 3(3) of the Law of Contract Act requires contracts relating to interests in land to be in writing, signed and witnessed. This ensures certainty and enforceability in land transactions.

In off-plan and sectional property purchases, buyers should ensure that all material representations by the developer are expressly included in the sale agreement, as marketing materials and verbal assurances may not be legally binding.

Key terms such as the purchase price, payment schedule, approved plans, completion timelines, unit specifications, common property rights and dispute resolution mechanisms should be clearly documented. The courts have consistently upheld these requirements, including in *Leo Investments Ltd v Estuarine Estate Ltd [2017] eKLR*, where the Court reaffirmed that non-compliant land agreements may be unenforceable.

#### **DUE DILIGENCE BEFORE PURCHASING A SECTIONAL UNIT**

Comprehensive due diligence is the most effective means of mitigating risks associated with the acquisition of a sectional unit. Before committing to a purchase, a purchaser should verify ownership of the development land, the existence of any charges or encumbrances, planning and environmental approvals, approved development plans, title issuance arrangements, management structures, and the developer's legal authority to undertake and sell the development.

Particular attention should be given to approved sectional plans, occupation certificates, service charge arrangements, common property rights, existing disputes, and any financing arrangements affecting the development. Purchasers should also conduct an official search to confirm ownership and identify any restrictions, cautions, court orders, or security interests registered against the property.



## SECTIONAL UNIT ACQUISITION DUE DILIGENCE MATRIX

Due Diligence Area	Purpose	Risk if Not Addressed
<b>Ownership &amp; Title</b>	To confirm the developer's ownership of the land and identify any restrictions, encumbrances, cautions or disputes affecting the property.	Defective title, ownership disputes, inability to obtain title
<b>Land Tenure</b>	To determine the nature of tenure and assess the long-term value and marketability of the unit.	Reduced asset value and financing difficulties
<b>Charges &amp; Financing</b>	To establish whether the property is charged to a financier and ensure there is a clear mechanism for discharge and transfer of individual units.	Delayed transfers, title issuance complications and lender enforcement risks
<b>Planning Approvals</b>	To verify that the development has obtained all requisite planning and building approvals and complies with applicable legal and regulatory requirements.	Regulatory enforcement and development restrictions
<b>Environmental Compliance</b>	To confirm compliance with environmental laws and the existence of required environmental approvals.	Project delays and regulatory sanctions
<b>Sectional Documentation</b>	To ensure sectional plans, governance documents and title issuance arrangements are in place.	Delays in issuance of sectional titles and governance disputes
<b>Sale Documentation</b>	To confirm the sale agreement is legally valid, enforceable and adequately protects the purchaser's interests.	Enforceability risks and contractual disputes



<b>Developer Disclosures</b>	To verify that all material information concerning the development has been disclosed to purchasers.	Information asymmetry and investment risk
<b>Development Specifications</b>	To confirm that the completed or proposed development matches approved plans and marketing representations.	Misrepresentation and purchaser disputes
<b>Common Property Rights</b>	To ascertain the purchaser's rights over parking areas, amenities, access ways and other common property.	Future disputes regarding common property
<b>Management Structure</b>	To understand how the development will be governed, managed and maintained after completion.	Operational and service delivery disputes
<b>Service Charges</b>	To assess the reasonableness, transparency and sustainability of service charge obligations.	Delays in issuance of sectional titles and governance disputes
<b>Management Structure</b>	To understand how the development will be governed, managed and maintained after completion.	Operational and service delivery disputes
<b>Future Development Rights</b>	To determine whether the developer has reserved rights to undertake future phases or additional developments that may affect the property.	Increased density and reduced purchaser enjoyment
<b>Tax Considerations</b>	To identify all applicable taxes, duties and ongoing financial obligations associated with ownership.	Unanticipated costs and compliance issues
<b>Foreign Investment Considerations</b>	To ensure the ownership structure complies with legal and regulatory requirements applicable to foreign investors.	Regulatory, tax and immigration complications



## BUYING A UNIT ON CHARGED LAND

Many developments in Kenya are financed through bank lending secured by a charge over the development land.

While this is a legitimate and widely accepted financing model, purchasers should appreciate that the existence of a charge creates important legal implications.

Under the Land Act, a developer may be restricted from transferring or otherwise disposing of interests in charged land without complying with the terms of the charge and obtaining any required lender consents.

Purchasers should therefore establish:

- Whether the development land is charged;
- The identity of the financier;
- Whether lender consent is required;
- The mechanism for release of individual units;
- Partial discharge arrangements; and
- The process for issuance of sectional titles.

Failure to address these issues may result in delays in registration, title issuance disputes and financing-related complications.

## SECTION 43 OF THE SECTIONAL PROPERTIES ACT: DISCLOSURE REQUIREMENTS

Section 43 of the Sectional Properties Act provides important protections for purchasers by requiring developers to disclose prescribed information before selling or agreeing to sell a unit. This includes title documents, sectional plans, by-laws, management arrangements, common property information, and details of any charges affecting the development.

Where a development is financed through bank lending, developers must also disclose information relating to any registered charge and the associated financing arrangements. This enables purchasers to understand the extent of any encumbrances and how lender rights may affect title issuance and transfer processes.

Purchasers should therefore review all disclosure documents before signing a sale agreement or making substantial payments. Together with the Law of Contract Act and broader consumer protection principles, these requirements promote transparency and ensure purchasers have sufficient information to make informed decisions.

## CHANGES TO APPROVED PLANS AFTER SALE

One of the most significant risks facing purchasers arises where developers materially alter approved plans after units have already been sold.

Examples include increasing density, adding additional floors, constructing additional units, reducing common areas, eliminating amenities, reallocating parking, altering access arrangements or changing the overall character of the development.

While not every variation will be unlawful, changes that materially affect purchaser rights, common property interests, value, use or legitimate expectations may expose a developer to legal liability.

Developers should therefore exercise considerable caution before implementing material changes that affect purchasers or common property rights.

## JUDICIAL PROTECTION OF PURCHASERS

Kenyan courts have increasingly demonstrated a willingness to protect purchasers against unlawful post-sale alterations.

In *Khalid Hussein Rehman v Ahmed Jan Mohamed Suleiman Luhar* [2022] KEELC 13714 (KLR), the Environment and Land Court restrained a developer from constructing an additional apartment on the rooftop of an existing development after units had already been sold.

The Court found that the additional construction was inconsistent with the development scheme represented to purchasers and lacked the requisite approvals. The Court subsequently issued a mandatory injunction requiring removal of the impugned development.

The decision affirms that purchasers acquire enforceable rights not only in their individual units but also in relation to the approved development concept, common property structure and overall development scheme. It further underscores the principle that developers cannot unilaterally alter a development in a manner that prejudices purchasers' rights and legitimate expectations.



## MISREPRESENTATION IN SECTIONAL PROPERTY TRANSACTIONS

Misrepresentation remains one of the most significant legal risks in off-plan and sectional developments.

Misrepresentation may arise through false statements, misleading advertising, inaccurate descriptions of unit sizes, concealment of encumbrances, false promises regarding amenities, inaccurate timelines or misleading representations regarding approvals and title issuance.

Where purchasers rely upon such representations, courts may grant remedies including rescission, damages, injunctions, specific performance and other equitable relief.

Developers should therefore ensure that all marketing materials, brochures, advertisements, sales presentations and promotional statements accurately reflect the approved development and the rights being sold.

## COMMON PROPERTY RIGHTS

A purchaser of a sectional unit acquires more than ownership of the individual unit.

The purchaser also acquires legally protected rights relating to common property and shared facilities.

Developers should not unilaterally diminish, reallocate or appropriate common property rights in a manner that prejudices purchasers.

The principles articulated in *Rehman v Luhar* reinforce the protection of common property rights and the preservation of the development scheme represented to purchasers.

## FOREIGN INVESTOR CONSIDERATIONS

Kenya remains an attractive destination for foreign investment in residential, commercial, industrial, hospitality and mixed-use real estate developments. Foreign investors may acquire sectional units either in their personal capacity or through locally incorporated Kenyan companies, subject to compliance with applicable land, company, tax and immigration laws.

The use of a Kenyan company may provide advantages in relation to asset holding, governance, financing, succession planning and future investment expansion. Foreign investors should note that non-citizens may not hold freehold interests in land and may generally hold land on a leasehold basis for terms not exceeding ninety-nine (99) years.

Where a foreign investor establishes a Kenyan company and undertakes qualifying investment activities, the investment may support applications for investor permits, work permits or certain residency pathways, subject to compliance with applicable immigration laws and approval by the relevant authorities. However, ownership of property alone does not automatically confer work authorization, permanent residence or citizenship rights.

Integrated legal, tax, corporate and immigration advice should therefore be obtained at the outset of the investment.

## CONSEQUENCES OF NON-COMPLIANCE

The Sectional Properties Act establishes offences and sanctions for contraventions of its provisions.

Non-compliance may expose developers and other stakeholders to:

- Regulatory investigations;
- Enforcement action;
- Statutory penalties;
- Civil liability;
- Damages claims;
- Injunctions;
- Rescission claims;
- Compliance orders; and
- Significant reputational harm.

Depending on the circumstances, criminal liability may also arise where fraudulent or unlawful conduct is involved.

Developers should therefore regard compliance not merely as a legal obligation but as an essential component of project governance, investor confidence and risk management.

## KEY TAKEAWAYS

Purchasers should not rely solely on marketing materials, artist impressions, websites or verbal assurances.

Before purchasing a sectional unit, purchasers should conduct comprehensive due diligence, verify ownership and approvals, confirm whether the development land is charged, review approved plans, understand title issuance arrangements, assess management structures and obtain independent legal advice.

Particular attention should be paid to financing arrangements, disclosure obligations under the



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Sectional Properties Act, common property rights and any proposed changes to approved plans.

For foreign investors, careful consideration should also be given to ownership structures, tax implications, corporate structuring and immigration considerations.

A sectional unit is often one of the most significant investments an individual or business will make. Proper legal structuring, regulatory compliance and due diligence are therefore essential to protect ownership rights, preserve investment value and minimize future disputes.

#### HOW CM ADVOCATES LLP CAN ASSIST

Our firm provides integrated legal and regulatory advisory services across the entire real estate lifecycle—from acquisition and financing to

development, asset optimisation, restructuring, dispute resolution and exit strategies.

Our team advises purchasers, developers, financiers, investors, family offices, trustees, private clients and institutional stakeholders on:

- Sectional developments and off-plan acquisitions;
- Development financing and secured lending transactions;
- Due diligence and title audits;
- Project approvals and regulatory compliance;
- Consumer protection and purchaser disputes;
- Construction and development disputes;
- Joint venture and development structures;
- Real estate investment vehicles;
- Immigration-linked investment structures; and
- Complex real estate and infrastructure transactions.

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## Practice Contact:

### Real Estate, Development & Built Environment (REDBE) Practice

E: [REDBE@cmadvocates.com](mailto:REDBE@cmadvocates.com)

### Department Contact

E: [RBF@cmadvocates.com](mailto:RBF@cmadvocates.com)

## CM Advocates LLP – Contact Details

### Head Office Nairobi

I&M Bank House, 7th Floor, 2nd Ngong Avenue  
T: +254 20 2210978 or +254 716 209673  
P.O. Box 22588 – 00505, Nairobi Kenya  
E: [law@cmadvocates.com](mailto:law@cmadvocates.com)

### Mombasa Office

Links Plaza, 3rd Floor, Links Road, Nyali  
T: +254 041 447 0758 / +254 41 447 0548  
P.O. Box 90056 – 80100, Mombasa Kenya  
E: [mombasaoffice@cmadvocates.com](mailto:mombasaoffice@cmadvocates.com)

[www.cmadvocates.com](http://www.cmadvocates.com)

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