<u>Kablan Contracts - buying "on paper"</u>

By Avner Slater, Adv.

Builder contracts, known as "on-paper" or "pre-construction" tend to be extremely one-sided, in favor of the builder. It's a seller's market and the general attitude is "take it or leave it. If you don't take it, someone else will". The Israeli government tries to improve things from time to time, by changing the law and putting more responsibility on the builders, but the builders keep changing the contracts and finding ways to remove responsibility from themselves and put it back onto the buyers. Builder contracts are 40-80 pages long and consist of many disclaimers.

The following is a list of typical clauses in such contracts, which are non-negotiable, and of which the buyer must be aware:

1. "The apartment will be completed by …", 24- 36- 48 months. This is always approximate. It's almost always late. Do not expect to have it ready on time. Often, you will sign a contract before the builder even has a building permit and has no idea when he will get it, or if changes to the project will be required in order to get the permit.

2. The apartment may be delivered up to 30 days late, for no reason at all. After that, there is a long list of reasons why it may be delivered even later - **WITHOUT COMPENSATION** - including: elections, wars, Arab uprisings, strikes in government or the industry, stormy weather, pandemics, etc. It is actually quite rare for apartments to be delivered on time. Don't expect to receive compensation of any kind (rent or other). You will only be compensated if you can prove that the builder had no reason at all for being late, other than laziness or negligence, and you can not prove that.

3. If you intend to make any kind of changes or upgrades, you must use the building company's workers and suppliers. The builder will most likely not even discuss changes with you, until after you sign the contract. Even after that, he will not commit to anything but will "do his best" to accommodate you. In other words, <u>maybe</u>. If and when the builder decides to allow you to make the changes you desire, you must sign specific contracts regarding the extra work. You must pay up front for the extra work or upgrades (in other words, you cannot count on your mortgage to pay for this). You will be required to prepare and submit specific architectural plans. You may have very little time to do all of the above. It is likely that this will postpone the delivery of your apartment even further.

4. Construction will continue all around you, even after you move in. The infrastructure, i.e. streets, sidewalks, streetlights, etc., may not be complete, not to mention public transportation or places to shop, which may not be ready for months or years after you move in.

5. Up to a 2% difference in the size of the apartment and up to a 5% difference in the amounts or sizes of appliances (i.e. number of electrical outlets or size of bathtub or sink) is acceptable

and does not merit a refund of any kind. In general, the size you are told will be the size of your apartment is the gross size, not net. The net size may be 10-12% smaller.

6. One of the addendums to the contract is the *Mifrat*- the specifications ("Specs"): exactly what type of windows, window frames, screens or lack thereof, doors, door frames, faucets, sinks, floor tiles, wall tiles in kitchen/washrooms, etc. These are not the field of attorneys. It is strongly recommended that one hire an architect or an interior designer to review this and give their opinion on it and possibly recommend upgrades. On that note, you will need a person "on the ground" to be available to go to the site to receive deliveries and/or make sure the correct products have been delivered. Also, towards the end of the construction, that person will do the walk-through, order the utility meters and be available for all the last-minute closing issues, which are not legal matters. Be aware that if you choose not to upgrade, you may receive a very basic kitchen, with a minimal number of cabinets, and maybe even just one sink (this recently happened to a client of mine).

7. There may be businesses in your building, offices, shops or other. You may even have a school or a kindergarten in your building.

8. The builder can sell as many parking spots or storage units as he wants to whomever he wants. You cannot ask "How come *he* got 3-4, while I only got one?" He can also sell parts of the common property, including roofs, to whomever he wants. You may buy a penthouse and later discover that the roof above you is owned by someone else, who may in the future apply for building rights, to build on top of your roof.

9. You have no way of knowing if you will be living in a 6 story, 8 story or a 10-12 story building. The builder may apply to add stories above you even after you move in.

10. You have no way of knowing what your view will be, or if you will have a view at all.

11. Part of the price (currently 40%), is linked to the construction index, which means it is likely to go up 3-4% (or more) per year. Many builders will not allow you to pay early, even if you want to avoid the index increase.

12. You will be expected to pay the final payment at least 14-30 days before receiving the keys.

13. When you receive the key, there is a walk-through protocol, in which you point out anything and everything you believe must be fixed/replaced. You must be very careful not to miss anything, since if you do, they will not have to fix it until the end of the warranty period. Some choose to bring an engineer/building inspector with them to the walk-through. Many of the things you point out will not be repaired before you receive the keys, unless they prevent you from moving in. You will be expected to move in, and they will do the repairs at their convenience.

14. In general, they will put off the warranty repairs for as long as they possibly can, so they don't have to refix anything.

15. The builder's workers may enter your apartment (basically at any time), in order to conduct repairs in your apartment or in any next-door apartment, or in the common property. You commit in the contract- to allow them in.

16. The builder can pass on his responsibility for repairs to any other company or individual and basically remove all responsibility from himself (unless you have tried the other company and did not get service from them).

17. The builder is only responsible for repairing his own work. He is not responsible for additional damage which may have been caused as a result of his faulty work.

18. The price of the apartment is based on an estimate of expected costs. If building costs exceed what was expected or if any extra infrastructure work is required or if any new taxes must be paid, the price of the apartment may change accordingly.

19. The apartment will be received completely bare and very dusty. The Kablan does not clean it for you. You must bring your own light bulb and a phone charger with you to the walk-through, to make sure all the sockets work properly.

20. Unexpected fees & costs: 1. You must pay a fee to the builder's attorney. This is done at the contract signing. (Currently around NIS 6,000 plus VAT, on apartments up to NIS 4.6 million. Above that, they can charge as much as 1.5% plus VAT.) 2. Purchase tax is due within 60 days of the purchase. If you are not a resident of Israel, the tax is 8% (up to NIS 6 million. Above that, it's 10%.) 3. You must pay a few thousand NIS for utility meters plus a few thousand NIS for title registration costs. These last 2 are due toward the closing. 4. Find out in advance if you are expected to pay a realtor's fee to the sales representative.

21. Receiving title takes time. You may not have title for 2 years after receiving possession. That's normal. During that time if you want to sell, you must go through the building company, receive their approval and pay them a fee. Most builders **will not** allow you to sell before receiving possession (i.e. if you decide to flip it before you finish paying for it). The purchase contract says clearly that you can not. Some may allow it anyway, for a price.

22. VERY IMPORTANT: You must make the payments on time. If not, you will incur interest and fines. Don't expect the company to remind you. You must remember on your own. Plan ahead, especially if your funds are coming from overseas. This takes time. Mortgages too take a lot of time. You must start working on your mortgage, at least 60 days before the payment is due. Delays by the bank are not the builder's problem and will not justify paying late. Put the payments schedule in your Google (or other) calendar, with advance reminders.

23. Payments must be made on time according to the payment schedule, regardless of the progress of the construction, except for the final payment, which should be paid when the apartment is completed (or shortly before). You may be paying 80-90% of your mortgage for months, before you actually get the keys. Plan ahead.