



## The legal and legitimate nature of the real estate sale contract based on designs - a comparative study between Algerian law and Islamic jurisprudence.

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### **Abstract:**

*The sale of off-plan real estate contract is considered one of the most important legal mechanisms introduced by the Algerian legislator in the field of real estate development to meet citizens' housing needs, especially via Law 11-04, which defines the rules governing real estate development activity, offering facilities, guarantees, and sanctions for the two sides in case of a breach of obligation. Due to the unique nature of this contract, legal and Shariah scholars have differed regarding its nature. Some legal scholars classify it as a form of ordinary sale contract, others trace it back to a contract of work, and a group asserts it is a form of sale of future things. Furthermore, some consider it a commercial contract, others view it as a civil contract, while one school of thought sees it as a mixed or composite contract. The same applies to Shariah scholars: some classify it under the manufacturing contract, others consider it a sale of described item in a debt, and a third group interprets it as a form or model of sale of non-existent things.*

*This study aims to determine the nature of the off-plan sale contract in Algerian Law and Islamic Jurisprudence, and to identify the extent of agreement and difference between what is stipulated in Algerian Law, specifically Law 11-04, and the views of Shariah scholars regarding the legal characterization of the sale of off-plan real estate contract, given its specificity and recent emergence, all within a comparative framework. The study reveals that the Algerian legislator has been largely successful in this regard.*

**Keywords:** Sale of off-plan real estate, contract, sale of non-existent things, contract, real estate development.

## **La nature juridique et légitime du contrat de vente immobilière fondé sur des plans - étude comparative entre le droit algérien et la jurisprudence islamique.**

### **Résumé :**

*La vente sur plan est considérée comme l'un des mécanismes juridiques les plus importants mis en place par le législateur algérien dans le domaine de la promotion immobilière afin de répondre aux besoins des citoyens en matière de logement, notamment par le biais de la loi n° 11-04 qui définit les règles régissant l'activité de promotion immobilière, en offrant des facilités, des garanties et des sanctions pour les deux parties en cas de manquement à leurs obligations. En raison de la nature unique de ce contrat, les juristes et les spécialistes de la charia ont des avis divergents quant à sa nature. Certains juristes le classent comme une forme de contrat de vente ordinaire, d'autres le rattachent à un contrat d'entreprise, et un groupe affirme qu'il s'agit d'une forme de vente de choses futures. En outre, certains le considèrent comme un contrat commercial, d'autres comme un contrat civil, tandis qu'une école de pensée le considère comme un contrat mixte ou composite. Il en va de même pour les spécialistes de la charia : certains le classent dans la catégorie des contrats de fabrication, d'autres le considèrent comme une vente d'un bien décrit dans une dette, et un troisième groupe l'interprète comme une forme ou un modèle de vente de biens inexistantes.*

*Cette étude vise à déterminer la nature du contrat de vente sur plan dans le droit algérien et la jurisprudence islamique, et à identifier l'étendue des concordances et des divergences entre les dispositions du droit algérien, en particulier la loi 11-04, et les opinions des jurisconsultes de la charia concernant la qualification juridique du contrat de vente immobilière sur plan, compte tenu de sa spécificité et de son émergence récente, le tout dans un cadre comparatif. L'étude révèle que le législateur algérien a largement réussi dans ce domaine.*

**Mots clés :** *Vente immobilière sur plan, contrat, vente de choses inexistantes, contrat, promotion immobilière.*



## Introduction

Housing is considered one of life's necessities that cannot be dispensed with. An individual's need for shelter is no less important than their need for clothing or a job to earn a living. However, providing housing is considered one of the crises facing many countries, causing suffering for a large segment of society, especially those with low and middle incomes. Algeria, as a country, is not isolated from the repercussions of this crisis.

Faced with this crisis and the citizens' increasing need for housing, the Algerian state has resorted to new methods and approaches to mitigate the severity of the housing problem through several legal texts. The contract of sale off-plan is considered one of the most important legal mechanisms introduced by the Algerian legislator within the framework of real estate promotion as a solution to the financing problem faced by the state, the buyer, and the seller.

This housing formula alleviates the burden on public institutions, given that the construction of new buildings requires massive funds that the state may be unable to provide amidst increasing demands. This is achieved by opening the initiative to the private sector and encouraging real estate investment through what is known as the real estate operator or promoter. This leads to an increase in housing provision at the expense of the real estate promoter, offering support, contribution, and relieving the state of embarrassment.

This new housing formula also enables the buyer (subscriber) to obtain a housing unit in the future without being obligated to pay the full price in one installment, in

addition to the financial assistance provided by the state to the citizen. Simultaneously, the seller (real estate promoter) views it as an effective means of financing the project through the payments and advances received from the buyer. The real estate promoter can secure a reasonable cash flow for each phase of the project from the total installments paid by the buyer for those units.

The distinctiveness of the contract of sale of real estate off-plan and the guarantees it carries have made it one of the desired and sought-after policies. It largely serves the interests of both parties to the contract—the real estate promoter (seller) and the subscriber (buyer). The seller receives installments from the buyer, thereby financing their project, which is the construction of a housing unit. In return, the buyer can obtain a building in the future that aligns with their desires and financial capabilities.

The novelty of the contract of sale off-plan and its distinction from other contracts due to many features necessitated the intervention of legal scholars to determine its legal nature, and for Sharia scholars to weigh it against the principles of Islamic law and find a corresponding structure for it in Islamic jurisprudence.

In light of the prevalence of this contract, the importance of this study arises to clearly highlight the features of the contract of sale of real estate off-plan by stating the legal and Sharia classification and the position of the Algerian legislator on it. Additionally, it aims to appreciate the efforts of the Algerian state in mitigating the housing crisis through legal texts, especially Law 11-04 concerning the rules governing real estate promotion activity.



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Hence, the main problem emerges: What is the nature of the contract of sale of real estate off-plan under Algerian law and Islamic jurisprudence?

To answer the posed problem, the study has been divided into three sections: The first section is dedicated to the concept and characteristics of the contract of sale of real estate off-plan. The second section addresses the legal nature of this contract. Finally, the third section focuses on the classification of this contract in Islamic jurisprudence.

## **1. Concept and Characteristics of the Contract of Sale of Real Estate Off-Plan**

The contract of sale of real estate off-plan is considered one of the most important contracts in the field of real estate promotion in Algerian legislation, serving as a housing formula and a means to alleviate the housing crisis. Given the specificity of this contract and its distinguishing features – especially since its subject matter is a property not in existence at the time of contracting, but whose future existence is possible – the Algerian legislator regulated its provisions through special rules to differentiate it from similar contracts. In this section, we attempt to address the concept of the contract of sale of real estate off-plan (Subsection One) and clarify its characteristics (Subsection Two).

### **1.1. Definition of the Contract of Sale of Real Estate Off-Plan in Algerian Legislation and Legal Jurisprudence**

To define the contract of sale of real estate off-plan, we must refer to the definition provided by the Algerian legislator, as well as the definitions of legal scholars. It

should be noted here that there are other names for this contract, including: buildings under construction, real estate in the completion phase, real estate in the construction phase, and sale on the map. The Algerian legislator chose the name "sale of real estate off-plan".

### ***1.1.1. The Algerian Legislator's Definition of the Contract of Sale of Real Estate Off-Plan***

The Algerian legislator addressed the definition of the contract of sale of real estate off-plan in Article 28 of Law 11-04 by stating:

"The contract of sale off-plan for a building or part of a building slated for construction or under construction, is the contract which includes and consecrates the transfer of land rights and ownership of the buildings by the real estate promoter in favour of the subscriber in parallel with the progress of the works, and in return, the subscriber undertakes to pay the price as construction progresses."<sup>1</sup>

What is notable about this definition is that the Algerian legislator defined the contract of sale off-plan in terms of its effects, considering it a contract that creates an obligation to transfer ownership after the necessary legal procedures are taken to establish this effect.<sup>2</sup>

In accordance with Article 3 of Law 11-04, this contract creates an obligation to transfer the ownership of the land and buildings for residential, commercial, professional, or artisanal use, in exchange for the payment of the price to the

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<sup>1</sup>Law 11/04 dated February 17, 2011, which determines the rules governing real estate promotion activity, Official Gazette No. 14 issued on March 6, 2011, p. 08.

<sup>2</sup>Ali Ben Ali, *The Contract of Sale Off-Plan under Law 11-04*, Master's Thesis, Faculty of Law, University of Boumerdes 2015, 2016, p. 13.



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seller (the real estate promoter) in parallel with the progress of the works.

A close look at the definition in the Article 28 reveals some ambiguity and issues, as it does not provide a precise, comprehensive definition that specifies the nature of this contract to distinguish it from similar contracts. Furthermore, the statement about the transfer of building ownership and land rights in parallel with the progress of the works is an issue requiring clarification. Did the legislator intend that the transfer of ownership occurs in stages? This is illogical as it contradicts the necessary legal procedures for transferring real estate ownership. Or did they intend to separate the transfer of land ownership from building ownership? In this case, both should not be included in the same contract.<sup>1</sup>

### ***1.1.2. Legal Scholars' Definition of the Contract of Sale of Real Estate Off-Plan***

Several jurisprudential definitions of the contract of sale of real estate off-plan have been given. Among them:

"It is the contract by which the seller (the real estate promoter) undertakes to build the contracted-upon property within the period specified by the contract, and that this construction complies with the agreed-upon specifications, designs, models, and drawings. He also undertakes to transfer his rights to the land, as well as the ownership of the building erected on the land and existing at the time of

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<sup>1</sup>Kettou Lamia, The Contract of Sale Off-Plan within the framework of Law No. 11-04 Defining the Rules of Real Estate Promotion Activity, Master's Thesis in Law, Faculty of Law and Political Sciences, Mouloud Mammeri University of Tizi Ouzou, 2013, p. 36.

concluding the sale. It transfers the ownership of the facilities that will be established in the future, piece by piece, to the buyer immediately upon their completion. The buyer (subscriber) undertakes to pay the price according to the progress of the construction works."<sup>1</sup>

Another opinion is that it is a sale of a property **not yet constructed**, whereby the seller undertakes to build it and transfer its ownership to the buyer in various forms, depending on the type of sale.<sup>2</sup>

Others expressed it as a real estate sales contract whose subject is a property under construction. By virtue of this contract, the real estate promoter (the seller) undertakes to complete the construction within the agreed-upon period and according to the required specifications, and to transfer its ownership to the buyer, who undertakes to pay the seller, during the construction phase, installments deducted from the sale price, the value, method, and due dates of which are determined by agreement.<sup>3</sup>

Yet another view is that it is the contract by which a natural or legal person undertakes to construct buildings on their land or on land over which they hold the right to build, on behalf of the buyer, and to transfer its ownership to them and deliver it according to the agreed-upon specifications within an agreed-upon or reasonable time frame, in

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<sup>1</sup>Ayyashi Shaaban, *The Contract of Sale of Real Estate Off-Plan: A Comparative Study Between Algerian and French Law*, Doctoral Thesis in Private Law, Faculty of Law, Mentouri University, Constantine, 2011-2012, p. 21.

<sup>2</sup>Muhammad Lamoussakh, *Legal Guarantees in the Contract of Sale Off-Plan*, *Legal Forum Journal*, Issue 6, n.d., p. 56.

<sup>3</sup>Dani Hamdani, *The Legal System of the Contract of Sale of Real Estate Off-Plan in Algerian Legislation*, Master's Thesis in Private Law, Faculty of Law and Political Sciences, University of Bouira, 2013, p. 08.



exchange for installments paid according to the progress of the construction works or at specified time intervals.<sup>1</sup>

Alternatively, it is a contract pertaining to a subject that has not yet been created. By virtue of this contract, the seller commits to constructing a specific property in accordance with certain models defined by the contract documents. They also commit to transferring the ownership of this property to the subscriber and delivering it to them, in exchange for a cash price paid by the buyer.<sup>2</sup>

Or it is a real estate sales contract whose subject is a property under construction. By virtue of this contract, the promoter—the seller—undertakes to complete its construction within the agreed-upon period and with the required specifications, provided that they transfer its ownership to the buyer, who undertakes to pay the seller during the construction phase, installments deducted from the sale price, the value, method, and due dates of which are determined by the agreement of the two parties.<sup>3</sup>

Undoubtedly, the differences among legal scholars in providing a comprehensive definition for this contract indicate its unique nature. For this reason, it is difficult to provide a precise and all-encompassing definition for this contract. Therefore, it can generally be said that it is a formal contract whose subject is a property under completion or to be created and constructed in the future, whether the

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<sup>1</sup>Ali Ben Ali, *The Contract of Sale Off-Plan Under Law 11-04*, Master's Thesis in Law, Faculty of Law, University of Boumerdes, 2015-2016, p. 13.

<sup>2</sup>Sibel Jaafar Haji Omar, *Guarantees of the Contract of Sale of Buildings Under Construction: A Comparative Study*, Dar Wa'el, Amman, 1st ed., 2014, p. 06.

<sup>3</sup>Katfi Shahinaz, Al-Atrway Sulaf, *The Contract of Sale Off-Plan Under Law 11-04*, Master's Thesis in Law, Faculty of Law and Political Sciences, University of 8 May 1945, Guelma, 2018-2019, p. 10.

premises are for residential, professional, or commercial use. The seller, in their capacity as a real estate promoter, undertakes the completion according to specified deadlines and certain models that comply with construction and urban planning rules, and the transfer of ownership of the land and the building to the subscriber (the buyer), in exchange for a cash price that the buyer undertakes to pay in installments over the construction stages according to the progress of the works, calculated from the sale price.

## **1.2. Characteristics of the Contract for the Sale of Real Estate Off-Plan**

The contract for the sale of real estate off-plan is distinguished by characteristics that make it unique compared to similar contracts. Some of these characteristics align with the contract of sale governed by general rules, while others are inferred according to the rules of the real estate promotion activity, especially Law 11-04.

### ***1.2.1. Specificity of the Contract for the Sale of Real Estate Off-Plan with Regard to General Rules:***

- ❖ **A Named Contract (Specific Contract):** The contract for the sale of real estate off-plan is considered a named contract, as the Algerian legislator designated a name for it and regulated its provisions through Law 11/04, which defines the rules governing real estate promotion activity.
- ❖ **A Contract for Consideration (Onerous Contract):** Since the seller (the real estate developer) in a contract for the sale of real estate off-plan receives a price for selling the property to the buyer (the subscriber), who in turn benefits from this property and becomes its owner, we



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say that the contract for the sale of real estate off-plan is a contract for consideration. A contract for consideration is one where each of the contracting parties receives something in exchange for what they gave and what they committed to.<sup>1</sup>

- ❖ **A Determinable Contract:** Based on the fact that a determinable contract is one in which both parties can determine, at the time of contracting, the amount of what they receive and what they give, regardless of the equality between the two amounts<sup>2</sup>, we say that the contract for sale off-plan is one of the determinable contracts. This is because the real estate developer (the seller) undertakes to construct the building according to the specified deadlines and specifications defined in the contract, and in return, the buyer knows the estimated price that they will pay to the seller (the real estate developer).
- ❖ **A Bilateral Contract (Mutually Binding Contract):** A bilateral contract is defined as a contract that creates reciprocal obligations on both contracting parties, where each is considered both a creditor and a debtor at the same time.<sup>3</sup> The contract for the sale of real estate off-plan establishes reciprocal obligations on the contracting parties: the real estate developer (the seller) is obligated to transfer ownership and real estate rights based on the

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<sup>1</sup>Al-Arabi Belhadj, *The General Theory of Obligation in Algerian Civil Law*, University Publications Office, 2001, Algeria, Vol. 1, p. 49.

<sup>2</sup>Mohamed Sabri Al-Saadi, *Commentary on the Algerian Civil Code (The General Theory of Obligations)*, 2nd ed., Dar Al-Huda, Ain M'lila, Algeria, 2004, Vol. 1, p. 73.

<sup>3</sup>Al-Arabi Belhadj, *The General Theory of Obligation in Algerian Civil Law*, Previous Reference, p. 48.

specified or requested specifications, in exchange for the buyer's (the subscriber's) commitment to pay the price.

- ❖ **A Formal Contract (Contract Requiring a Specific Form):** The Algerian legislator stipulated that the contract for the sale of real estate off-plan must be drawn up in the form prescribed in Executive Decree 13-431<sup>1</sup>, meaning the mere convergence of the wills of the two parties to the contract is not sufficient.
- ❖ **A Contract of Adhesion:** A contract of adhesion is defined as a contract in which the offeror, possessing a legal or de facto monopoly, sets specific conditions that are not subject to modification or discussion, and directs them permanently to the public with the intention of joining it, thereby offering a commodity or service<sup>2</sup>. Accordingly, many legal scholars believe that the contract for the sale of real estate off-plan is a contract of adhesion, because it is a standard contract<sup>3</sup>, in addition to the fact that the buyer joins the contract without discussion and with complete consent, making them the weaker party in the contract. Therefore, the legislator intervened to protect them.

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<sup>1</sup>Executive Decree 13-431 of Safar 15, 1435 AH, corresponding to December 18, 2013, defining the standard forms for the reservation of rights contract and the contract for the sale of real estate off-plan, as well as the limits for the payment of the price of the property subject to the contract for sale off-plan, the amount and deadlines for the delay penalty, and the modalities of their payment, Official Gazette No. 66, issued on December 25, 2013.

<sup>2</sup>Mahfoud Ben Hamed Laacheb, *The Contract of Adhesion in Algerian and Comparative Civil Law*, National Book Enterprise, 1990, p. 31.

<sup>3</sup>Khaouathra Samia, *The New Provisions for Regulating the Contract for Sale Off-Plan in Law 11-04*, *Bohouth Journal*, Vol. 14, Issue 1, 2020, p. 202.



### 1.2.2. *Specificity of the Contract for the Sale of Real Estate Off-Plan with Regard to the Rules of Real Estate Promotion Activity.*

- ❖ **A Contract Pertaining to a Subject Matter Non-Existent at the Time of Contracting:** The subject matter of the contract for sale off-plan is a property that is not yet built or is under construction, the existence of which is possible in the future. This is in accordance with Article 28 of Law 11-04, which determines the rules governing real estate promotion activity, as well as Article 92 of the Civil Code which permits dealing with future things, as will be explained.
- ❖ **A Contract that Transfers Ownership:** The transfer of ownership in the contract for the sale of real estate off-plan occurs in **two stages** in return for the payment of the price:
  - **First Stage:** The stage of signing, in which only the bare ownership is transferred.
  - **Second Stage:** This occurs after the completion of the construction, the payment of the last installment of the agreed-upon price, and the drawing up of the delivery report.<sup>1</sup>
- ❖ **Protection of the Buyer by Virtue of Special Guarantees:** In addition to the guarantees stipulated in the general rules, Law 11-04 stipulated several special guarantees that ensure protection for the buyer of the off-plan property, including Articles 42, 45, and 49 of Law 11-04. The most important of these guarantees are: proper execution and

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<sup>1</sup>Bouhassane Samah, Ben Guirat Wafa, The Contract for Sale Off-Plan, Master's Thesis in Private Law, Faculty of Law and Political Sciences, University of May 8, 1945 Guelma, 2023-2024, p. 13.

conformity to the agreed-upon specifications and design, the ten-year guarantee, in addition to the amount of the guarantee deposited with the Guarantee and Surety Fund before commencing the construction process.<sup>1</sup>

- ❖ **Facilitation of Price Payment:** Article 28 of Law 11-04 and Article 03 of Decree 13-431 confirm that the buyer in the contract for the sale of real estate off-plan pays the price in the form of installments or payments according to the progress of the work, provided that the last installment is due upon delivery of the property.

## **2. The Legal Nature of the Contract for the Sale of Real Estate Off-Plan**

Determining the legal nature of the contract for the sale of real estate off-plan is of paramount importance, as it helps define the obligations of the contracting parties and the consequences resulting from the breach of those obligations, and so on.

In the absence of explicit legal texts regarding the legal nature of the contract for the sale of real estate based on designs, numerous and diverse legal scholarly opinions have emerged concerning its classification. Some opinions categorize it as an ordinary sale, others consider it a contract of construction, and still others regard it as a form of sale of future things. Furthermore, some consider it a civil contract, others view it as a commercial contract, and another opinion sees it as a mixed or compound contract.

There is no doubt that knowing the nature of the contract, whether it is civil or commercial, is of great importance in

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<sup>1</sup>Bousta Houssam Eddine, *The Legal System of the Contract for Sale Off-Plan in Algerian Legislation*, Master's Thesis in Law, Faculty of Law and Political Sciences, Mohamed Khider University, Biskra, 2016-2017, p. 14.



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terms of determining the competent judicial authority in case of a dispute between the parties, as well as the scope of evidence in both cases. In this section, we attempt to explain the nature of this sale in terms of its type, and in terms of its civil and commercial character.

## **2.1. The Nature of the Contract for the Sale of Real Estate Off-Plan in Terms of its Type**

There has been a jurisprudential debate regarding the legal classification of the contract for the sale of real estate off-plan in terms of its type, due to its proximity to several similar contracts and the absence of legal texts clarifying this. Some included this contract under the ordinary or traditional contract of sale, similar to the sale of property existing at the time of contracting, while another side included it within the contract of construction given its commitment to building.

Others consider it a compound contract consisting of a contract of construction and a sale, while one opinion classified it under the manufacturing contract (*Istisna'*). We will briefly present these views below:

### ***2.1.1. The Contract for Sale Off-Plan is an Ordinary Sale Contract***

Some jurists and researchers argue that the contract for sale off-plan is an ordinary contract of sale, where the real estate developer commits to transferring ownership in exchange for the buyer's payment of a specific price.<sup>1</sup>

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<sup>1</sup>Muhammad Al-Mursi Zahra, *Sale of Buildings Under Construction, A Comparative Study Between Egyptian, French, and Kuwaiti Civil Law*, Previous Reference, p. 54.

One of the criticisms directed at the proponents of this view is that an ordinary contract of sale is concluded after the completion of construction, while the contract for sale off-plan is concluded before the construction is finished<sup>1</sup>. This is evident from the text of Article 28 of Law 11-04, which states: "The contract for the sale off-plan for a building or a part of a building intended to be built or under construction..." However, the criterion of construction work, even if applied in some cases, is not comprehensive. There are instances of selling an incomplete property that is still considered an ordinary sale, such as when a person purchases a property that is not yet fully in existence, and it was agreed to buy it "as is" at the time of the contract so the buyer can complete the construction work themselves. In this case, the contract is not necessarily considered a contract for sale off-plan. Consequently, the criterion of the time of concluding the contract is not sufficient to classify it as an ordinary sale contract or a contract for sale of real estate off-plan.<sup>2</sup>

Therefore, the criterion for distinguishing between an ordinary sale and a sale of real estate off-plan is not based on the time of concluding the contract as much as it is based on the intention of the parties. If the intention was to oblige the seller to complete the property and finish the construction in accordance with the agreed-upon conditions in the contract, the contract falls outside the scope of an ordinary sale. However, if the contract was concluded before the start of

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<sup>1</sup>Kattū, Lāmiyah, The Sale Off-Plan Contract within the Framework of Law No. 11-04 Determining the Rules of Real Estate Promotion Activity, Ibid, p. 52.

<sup>2</sup>Skai Layla, Ben Nafi Yasmine, Contract for the Sale of Real Estate Based on Designs According to Law 11-04, Master's Thesis in Private Law, Faculty of Law and Political Sciences, Mouloud Mammeri University, Tizi Ouzou, 2013, p. 20.



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construction work and the intention was focused on transferring only the ownership of the land, we would be dealing with an ordinary contract for the sale of land, which might be followed by concluding a contract of construction to execute the building.<sup>1</sup>

To avoid confusion, the Algerian legislator created a special standard form for the contract for sale off-plan, as stipulated by Article 01 of Executive Decree No. 94-58.<sup>2</sup> With this, it becomes clear that the contract for sale of real estate off-plan is distinct from an ordinary contract of sale, while at the same time not excluding it from the domain of sale. Perhaps the legislator's designation of it as a "sale off-plan" confirms this. It is a sale distinguished by a special system whose application is subject to the provisions and texts of Law 11-04 and Executive Decree 94-58. Any matters not covered by their provisions are subject to and governed by the Civil Code as the general law.

### ***2.1.2. The Contract for Sale Off-Plan is a Contract of Construction***

A segment of jurisprudence views the contract for sale off-plan as falling under the contract of construction. This was

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<sup>1</sup>Muhammad Muhammad Al-Qutb Mus'ad Sa'eed, Provisions of the Contract for Sale Off-Plan, Journal of Legal and Economic Studies, Faculty of Law, Sadat City University, Egypt, Vol. 6, Issue 1, 2020, p. 31.

<sup>2</sup>Executive Decree 94-58 of Ramadan 25, 1414 AH, corresponding to March 07, 1994, concerning the standard form of the contract for sale off-plan applied in the field of real estate promotion, Official Gazette, Issue 13, issued on March 09, 1994, p. 11.

prevalent among French jurisprudence<sup>1</sup>, based on the argument that the real estate developer's principal obligation is the obligation to construct. This view is also supported by the fact that the law subjected this contract to many of the provisions of the contract of /construction.<sup>2</sup>

The Algerian legislator defined the contract of construction in Article 549 of the Civil Code, which states: "The contract of work/construction is a contract whereby one of the contracting parties undertakes to manufacture a thing or to perform a work in return for a remuneration that the other contracting party undertakes to pay."<sup>3</sup>

By applying this definition to the contract for sale off-plan, we find that both contracts share the feature that one of the parties undertakes to carry out and complete a work within a specific period in exchange for a price.

However, this similarity does not negate the existence of differences. From the Article 549 of the Algerian Civil Code, it is clear that the contract of construction aims at the performance of a work, while the contract for sale off-plan aims at the transfer of ownership.<sup>4</sup>

Dr. Mohammed Al-Mursi Zahra differentiates between three scenarios:

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<sup>1</sup>Iman Boustia, Private Real Estate Promotion in the Housing Sector in Algerian Legislation, PhD Thesis in Law Sciences, Faculty of Law and Political Sciences, Mohamed Khider University, Biskra, 2016-2017, p. 331.

<sup>2</sup>Ala' Hussein Ali, Contract for the Sale of Buildings Under Construction, A Legal Study, 1st ed., Zain Publications for Legal Affairs, n.d., 2011, p. 22.

<sup>3</sup>Order 75/58 of September 26, 1975, containing the amended and supplemented Civil Code, Official Gazette, Issue 78, issued on September 30, 1975.

<sup>4</sup>Katou Lamia, The Contract for Sale Off-Plan within the Framework of Law No. 11-04 Defining the Rules of Real Estate Promotion Activity, Previous Reference, p. 53.



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1. **First Case** : If the landowner provides the materials used in the construction process, and the contractor's role is limited to the work only, the contract is considered a contract of construction.
2. **Second Case**: If the employer is limited to providing the land, and the contractor, in addition to their work, provides the materials they use in the execution, we are also dealing with a contract of construction.
3. **Third Case**: If the contractor undertakes the construction on land they own or at least on land where the rightful owner grants them the authority to build, using materials provided by the contractor, then this sale pertains to a future thing under the name of sale off-plan or sale of a property under construction.<sup>1</sup>

By referring to the texts of Algerian law, we find that it distinguishes between the contractor and the real estate developer through Article 3 of Law 11-04, paragraphs 13 and 14. Also, Article 29 of the same law stipulates: "The contract for sale off-plan and the contract for the reservation of rights for a property intended to be built or under construction can only be concluded by the real estate developer, as stipulated in Articles 4 (paragraph 2), 18, 19, 20, and 21 of this law)." These texts indicate that the real estate developer is the only person authorized to conclude the contract for sale off-plan, and the contractor is not made a party to it.

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<sup>1</sup>Muhammad Al-Mursi Zahra, Sale of Buildings Under Construction, A Comparative Study Between Egyptian, French, and Kuwaiti Civil Law, 1st ed., Publisher Sayed Abdullah Wahba, Cairo, Egypt, 1987, p. 46.

### *2.1.3. The Contract for Sale Off-Plan is a Sale of Future Things*

The proponents of this view argue that the contract for sale off-plan is nothing more than a **sale of future things**, which the Algerian legislator stipulated in Article 92, paragraph 1, of the Algerian Civil Code, stating: "The subject matter of the obligation may be a future and certain thing."

With this text, it is permissible for the subject matter of the obligation to be a future thing, and therefore there is no impediment to the contract of sale pertaining to a thing that does not exist in the present but will exist in the future. According to this view, the contract for sale off-plan is a sale of the land in its future condition, i.e., after the construction is erected upon it. The subject matter of the seller's obligation is a building that does not exist when the contract is concluded but will exist in the future. Consequently, it is sufficient to agree on its descriptions at the time of concluding the contract, based on the principle that the sale of future things is legally permissible. Therefore, the contract does not result in the immediate transfer of ownership; rather, it creates an obligation on the seller to transfer the ownership of the future asset if its existence is realised.<sup>1</sup>

A segment of legal scholarship has criticized the idea that the sale off-plan is merely a sale of a future thing. Their critique is based on the following: the transfer of ownership in future things only occurs when the thing comes into existence in the future. However, in the contract for sale off-plan, the transfer of ownership is immediate for the land and

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<sup>1</sup>Iman Bousta, *Private Real Estate Promotion in the Housing Sector in Algerian Legislation*, Previous Reference, pp. 332, 333.



occurs in stages for the building.<sup>1</sup> The sale of future things is typically characterized by the buyer's risk regarding either the existence of the sold item itself or its quantity and amount. In contrast, the contract for sale off-plan is a contract regulated by distinct rules, with the legislator providing a series of guarantees that ensure buyer protection. The buyer in a sale off-plan does not risk the amount of the sold item or its existence, as the real estate developer is obligated to complete the construction according to agreed-upon specifications and within set deadlines, unlike the ordinary buyer in a contract for the sale of future things.<sup>2</sup>

However, the contract for sale off-plan is still considered a form or application of the permissibility of dealing with future things. This is because the contract for sale off-plan relates to a property that does not exist at the time of contracting but is capable of existing in the future. There is no difference here between the existence of only a part of it and its non-existence altogether, because the sold item in this contract is the building, not the plot of land or a part of the unit. The real estate developer undertakes to bring the sold property into existence in the future and transfer its ownership to the buyer.

This approach does not negate the occasional risk regarding the existence or specifications of the sold item in

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<sup>1</sup>Shawki Bannasi, *The Real Estate Promotion Contract: The Contract for Reservation of Rights—The Contract for Sale Off-Plan, in Light of Law No. 11-04, Determining the Rules Governing Real Estate Promotion Activity, Dar Al-Khaldounia, 2019, p. 98.*

<sup>2</sup>Aqila Noui, *The Legal System of the Contract for Sale Based on Design in Algerian Law, Master's Thesis, Contracts and Responsibility, Faculty of Law, Ben Aknoun, University of Algiers, 2004, p. 27.*

the contract for sale off-plan; reality has proven, due to various reasons, the non-completion of a real estate project or its completion with non-conformity to the agreed-upon specifications. This is precisely what prompted the Algerian legislator to surround it with a set of guarantees.

Based on that, it is clear that the contract for sale off-plan is a type of sale and one of the applications of dealing with future things. Nevertheless, it is considered a special contract with a distinct nature.<sup>1</sup>

## **2.2. Its Classification in Terms of its Civil and Commercial Nature**

The nature of the contract for the sale of real estate off-plan raises a question as to whether the acts required for the conclusion of this contract fall within the scope of commercial acts or whether it does not depart from a civil nature. This distinction is significant for determining the applicable rules (commercial law vs. civil law), the means of proof granted to the parties, and the judicial jurisdiction for disputes between the two parties.

Referring to Law 11-04, Article 4, which states: "Accredited real estate developers registered in the Commercial Register are authorized to initiate real estate projects," and Article 19 of the same law, which states: "Any natural or legal person qualified to carry out commercial acts is permitted to engage in the real estate promotion activity that is the subject of Articles 3 and 18 above, in accordance with the legislation in force and the conditions specified in this law." These two articles indicate that the contract for sale off-plan is a mixed or dual contract as it is

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<sup>1</sup>Iman Bousta, Private Real Estate Promotion in the Housing Sector in Algerian Legislation, Previous Reference, p. 334.



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considered a commercial act for the real estate developer (the seller), and thus the provisions and rules of Commercial Law apply to them. It is considered a civil act for the subscriber (the buyer), and the rules of Civil Law apply to them in this case. It should be noted here that the buyer is not necessarily or permanently a civil party. They may be a commercial entity meaning they buy from to sell again as a **profession** he practices, and in this case, the rules of Commercial Law apply to him. Based on the foregoing, if a dispute arises, the buyer has the freedom to choose to resort to either Civil or Commercial Court, with the possibility of proof by all means. This contrasts with the real estate developer (the seller), who is obligated to prove their commitment to the buyer through civil methods of proof.

As for the competent court to hear the presented dispute, it is the court within whose jurisdiction the sold property is located, as stipulated by Article 40 of Law 08-09<sup>1</sup>, which states: "...Lawsuits shall be filed before the judicial authorities listed below and none other: – In real estate matters, or works related to real estate, or lawsuits concerning leases, including commercial ones related to real estate, and lawsuits related to public works, before the court that has jurisdiction over the real estate, or the court that has jurisdiction over the place where the works are executed."

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<sup>1</sup>Law 08-09 of Safar 18, 1429 AH, corresponding to February 25, 2008, including the Code of Civil and Administrative Procedure, Official Gazette, Issue 21, issued on Rabi' al-Thani 17, 1429 AH, corresponding to April 23, 2008, p. 07.

### **2.3. The Juristic (Sharia) Classification of the Contract for the Sale of Real Estate Off-Plan**

A review of the contract for the sale of real estate off-plan by this name and these specifications reveals that it is one of the **contemporary contracts** that did not exist in the past. Since judgment upon a thing is predicated upon its conception, the discussion requires first presenting its Juristic (Sharia) form and then its appropriate classification before knowing its ruling.

By referring to old jurisprudence books, we hardly find an explicit definition of the contract for the sale of real estate off-plan, as it is an innovated formula. Only a reference to the origin of this contract in Islamic Sharia exists. However, some contemporary researchers have defined it, including Dr. Duha Mohammed Said Al-Nuaimi, who stated: "It is a contract by which the buyer acquires ownership of a property that the seller has not yet begun to build, or has not completed building at the time of contracting, and in which the seller undertakes to build the property according to agreed-upon specifications within the agreed-upon period in exchange for the latter's commitment to pay the price installments on their due dates."<sup>1</sup>

Dr. Rabeh Faghrouer defined it as a contract of sale concluded between the seller and the buyer, the subject matter of which is the completion of a housing unit that is totally or partially non-existent at the time of contracting. In it, the seller undertakes to complete this housing unit according to specific specifications and a defined deadline, and to transfer its ownership to the buyer after its

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<sup>1</sup>Duha Muhammad Said Al-Nuaimi, The Concept of the Sale of Real Estate Off-Plan and its Legal Classification, Sharia and Law Journal, College of Law, United Arab Emirates University, Issue 49, 2012, p. 232.



completion, while the buyer undertakes to pay consecutive installments of the total amount of the building commensurate with the progress of the work, knowing that the ownership of the sold item is officially transferred to him after the payment of the last installment of the building's total cost.<sup>1</sup>

Masoud About Abd Al-Moneim Arrabi described it as a contract for the sale of residential or commercial units that are not yet completed, with the specifications codified on an engineering blueprint that bears the final form of the building upon delivery, whereby both parties undertake to fulfill all the obligations agreed upon at the time of contracting.<sup>2</sup>

As for the Juristic (Sharia) classification of the contract for the sale of real estate off-plan, the opinions of jurists and researchers have varied between those who classified it under the contract of manufacturing, those who said it is a sale of a described item in one's liability, and those who included it under the sale of a non-existent item. This will be explained below:

### ***2.3.1. The Contract for the Sale of Real Estate Off-Plan is a Contract of Manufacturing***

Some contemporary jurists and researchers have concluded that the sale of real estate off-plan falls under the

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<sup>1</sup>Rabeh Faghrou, The Position of Islamic Jurisprudence on the Contract for the Sale of Real Estate Off-Plan in Algerian Legislation, *Journal of Scientific Research and Islamic Studies*, Vol. 11, Issue 5, 2019, p. 181.

<sup>2</sup>Masoud About Abd Al-Moneim Arrabi, The Contract for Sale Off-Plan: A Comparative Jurisprudential Study, *Journal of Jurisprudential and Legal Research*, College of Sharia and Law in Damanhour, Al-Azhar University, Issue 48, 2025, p. 2582.

category of the contract of manufacturing. Dr. Wahbah Al-Zuhayli stated: "The purchase of residential houses off-plan, after the official license is issued by the government, has come to rely on manufacturing contracts."<sup>1</sup>

He also mentioned in the Journal of Islamic Jurisprudence: "One of the most prominent examples and applications of the manufacturing contract is the sale of houses, dwellings, and residential homes off-plan with specific descriptions. The sale of these items in reality can only be justified on the basis of a manufacturing contract, and the contract is considered valid if the specifications of the construction are mentioned in the terms of the contract..."<sup>2</sup>

This is also the position of Dr. Mohammed Abd Al-Latif Salih Al-Farfour, who said: "Among the new applications of the manufacturing contract is the sale of residential houses and the like off-plan, with specific descriptions. This matter is only valid by classifying it as a manufacturing contract, and the contract is considered valid if all specifications that prevent and remove the uncertainty leading to dispute are mentioned in the terms of the contract..."<sup>3</sup>

This classification was formally adopted by the Islamic Fiqh Academy (IFA) in Jeddah, whose resolution stated: "That the acquisition of housing units through a manufacturing contract—on the basis of considering it binding—is permissible. Thus, the purchase of the dwelling

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<sup>1</sup>Wahbah Al-Zuhayli, *Contemporary Financial Transactions (Research, Fatwas, and Solutions)*, Dar Al-Fikr, 3rd ed., 2006, p. 308.

<sup>2</sup>Wahbah Al-Zuhayli, *The Istisna' Contract*, research published in the *Journal of Islamic Jurisprudence*, Vol. 7, p. 810.

<sup>3</sup>Muhammad Abd Al-Latif Salih Al-Farfour, *The Effect of Istisna' on Stimulating the Industrial Movement*, research published in the *Journal of Islamic Jurisprudence*, Vol. 7, p. 945.



before its construction occurs according to a precise description that removes the uncertainty leading to dispute, without the obligation to pay the entire price in advance. Rather, it is permissible to defer the payment in installments as agreed upon, while observing the conditions and regulations stipulated for the manufacturing contract by the jurists who distinguished it from the Salam contract."<sup>1</sup>

This view was also adopted by Dr. Rabeh Faghrou<sup>2</sup>, Dr. Izz Al-Din Zuba<sup>3</sup>, Dr. Duha Al-Nuaimi<sup>4</sup>, and Dr. Hossam Al-Din Afanah, who, when asked about the ruling on buying an apartment that has not yet been built based on its prepared blueprints, replied: "It is permissible to purchase an apartment or a building based on blueprints and maps. This is considered an manufacturing contract, provided that the blueprints and maps are detailed and include all specifications, in order to prevent future dispute and disagreement."<sup>5</sup>

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<sup>1</sup>Resolution No. 6/01/52, of the Islamic Fiqh Academy Council during its sixth conference session in Jeddah, Kingdom of Saudi Arabia, from March 14-20, 1990, Journal of Islamic Jurisprudence, Vol. 6, p. 114.

<sup>2</sup>Rabeh Faghrou, The Position of Islamic Jurisprudence on the Contract for the Sale of Real Estate Off-Plan in Algerian Legislation, Journal of Scientific Research and Islamic Studies, Vol. 11, Issue 5, 2019, Ben Youssef Ben Khedda University, Algiers, p. 195.

<sup>3</sup>Izz Al-Din Zuba, The Specificity of the Contract for the Sale of Real Estate Off-Plan from the Ordinary Sale Contract, National Forum on the Problems of Urban Real Estate and its Impact on Development in Algeria, held on February 17/18, 2013, Rights and Freedoms Laboratory, Faculty of Law and Political Sciences, Muhammad Khidr University, Biskra, p. 47.

<sup>4</sup>Duha Muhammad Said Abdullah Al-Nuaimi, The Concept of the Sale of Real Estate Off-Plan and its Legal Classification, Sharia and Law Journal, Emirates College, Issue 49, 2012, p. 239.

<sup>5</sup>Hossam Al-Din Afanah, *Fatwas: They Ask You*, Dandis Library, 1st ed., 2007, Palestine, p. 249.

However, Dr. Muhammad Tawfiq Ramadan Al-Bouti criticized the Islamic Fiqh Academy's decision, offering an alternative view: he stated: "The Islamic Fiqh Academy's resolution No. 6/1/52, which outlines the legitimate ways to provide housing through the manufacturing contract, considering it binding, and without requiring immediate payment of the entire price... and their inclusion of the issue of selling houses off-plan in installments under the manufacturing contract is contrary to the rules of the Hanafi school... The mentioned resolution lacks details whose omission leads to much uncertainty and disagreements... If the goal of this resolution is to assist in providing housing who cannot afford to purchase it by paying the full value, it is possible to achieve this objective through the transaction according to another juristic conception," and he proposed two scenarios for the validity of this contract.<sup>1</sup>

Na'imi Abd Al-Rahman, Sa'd Al-Din Muhammad Al-Kabbi, and Nasser Ahmad Ibrahim Al-Nashwi also dissented, disagreeing that the sale of real estate off-plan is a manufacturing contract.<sup>2</sup>

A close examination of the jurists' opinions regarding the manufacturing contract reveals that the majority (Jumhūr) of the Mālikī, Shāfi'ī, and Ḥanbalī schools classify it under

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<sup>1</sup>Muhammad Tawfiq Ramadan Al-Bouti, *Common Sales and the Impact of the Sold Item's Controls on their Legality*, 6th ed., Dar Al-Fikr, Damascus, Syria, Dar Al-Fikr Al-Mu'asir, Beirut, Lebanon, 2010, p. 185.

<sup>2</sup>Na'imi Abd Al-Rahman, *Sale Off-Plan in Light of Law 11-04: Its Legal Nature and Juristic Classification*, *Al-Midad Journal*, Ziane Achour University, Djelfa, Vol. 4, Issue 1, 2016; Sa'd Al-Din Muhammad Al-Kabbi, *Contemporary Financial Transactions in Light of Islam*, 1st ed., 1423 AH, 2002, pp. 335, 336; Nasser Ahmad Ibrahim Al-Nashwi, *Rulings of the Istisna' Contract in Islamic Jurisprudence*, n.ed., Dar Al-Jami'a Al-Jadida for Publishing, Alexandria, Egypt, 2005, pp. 452, 459.



different chapters, such as the Salam contract (forward sale), Ijāra (lease/hire/contract of work), or Sharika (partnership). Al-Dasūqī defines it by saying: "Like when you say to a person: 'Make me a sword or a saddle with such and such a description for a Dinar,' then it is necessary to advance the capital, specify the deadline (term), and not specify the worker or the material to be worked with."<sup>1</sup>

It is mentioned in *Rawdat Al-Tālibīn* in the context of Ijāra: "So, Ijāra is of two types: one pertaining to a specific object, like someone who hires a specific animal to ride... and one pertaining to a liability like someone who hires a described animal for riding or carrying, or says: 'I place on your liability the sewing of this garment, or the building of the wall,' and he accepts."<sup>2</sup>

Ibn Qudāmah defined it as a contract for a sold item described in one's liability for a known price and a known term (deadline).<sup>3</sup>

The manufacturing contract is permissible (*jā'iz*) according to the Mālikīs, Shāfi'īs, and Ḥanbalīs provided it meets the conditions of the Salam contract, such as describing the work, defining the term, and not stipulating a specific item or a specific worker to prevent harm. It also requires not deferring the price entirely, because postponement makes it a "sale of debt for debt." However,

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<sup>1</sup>Muhammad bin Ahmad bin Arfa Al-Dasūqī, *Hāshiyat Al-Dasūqī 'alā Al-Sharḥ Al-Kabīr*, Dar Al-Fikr, n.ed., n.d., Vol. 3, p. 217.

<sup>2</sup>Abū Zakariyyā Muḥyī al-Dīn Yaḥyā ibn Sharaf al-Nawawī, *Rawdat Al-Tālibīn wa 'Umdat Al-Muftīn*, edited by Zuhayr Al-Shawish, 3rd ed., Al-Maktab Al-Islami, Beirut, Damascus, Amman, 1412 AH, 1991, Vol. 5, pp. 173, 174.

<sup>3</sup>Abū Muḥammad Abdullah bin Ahmad bin Muhammad bin Qudāmah, *Al-Mughnī*, Dar Al-Fikr, Beirut, Lebanon, 1997, Vol. 4, p. 342.

the Mālikīs permitted deferring the price for two or three days.

Thus, classifying the contract for the sale of real estate off-plan as an *Istisna'* contract would only be valid by **paying the price in advance or deferring it for two or three days**, according to the Mālikīs<sup>1</sup>. This is inconsistent with the nature of the contract for the sale of real estate off-plan, as the emergence of this contract was linked to the need for people to secure housing despite their inability to purchase it with deferred payment. It is unimaginable to conduct a sale off-plan contract without stipulating a term (deadline). The fundamental nature of this contract is the postponement and installment of the price, and this does not align with the conditions of Salam according to the majority of Islamic jurists.<sup>2</sup>

In contrast, the Ḥanafī jurists regard manufacturing as an independent contract in its own right. One of their definitions of this contract is by the author of *Majma' Al-Anhur*: "Legally, it is the sale of a specific item that someone manufactures, where the customer requests both the work and the material from the manufacturer. If the material were provided by the person commissioning the work (*mustaṣni'*) it would be a lease (*ijāra*), not manufacturing".<sup>3</sup>

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<sup>1</sup>Mālik bin Anas bin Mālik bin 'Amir Al-Asbahī Al-Madanī, Al-Mudawwana, 1st ed., Dar Al-Kutub Al-'Ilmiyya, 1415 AH, 1994, Vol. 3, pp. 68, 69; Abū 'Abdillāh Muḥammad bin Idrīs Al-Shāfi'ī, Al-Umm, 2nd ed., Dar Al-Fikr, Beirut, 1403 AH, 1983, Vol. 3, pp. 133, 134; Abū Muḥammad 'Abdillāh bin Aḥmad bin Muḥammad bin Qudāmāh, Al-Mughnī, Maktabat Al-Qāhira, 1388 AH, 1968, Vol. 4, p. 215.

<sup>2</sup>Mas'ūd 'Abbūd 'Abd Al-Mun'im 'Arrābī, The Contract for Sale Off-Plan: A Comparative Jurisprudential Study, Previous Reference, p. 2589.

<sup>3</sup>Abd Al-Raḥmān bin Muḥammad bin Sulaymān known as Dāmād Afandī, *Majma' Al-Anhur fī Sharḥ Multaqā Al-Abḥur*, n.ed., Dār Ihyā' Al-Turāth Al-'Arabī, n.d., Vol. 2, p. 106.



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As for the form of manufacturing, it is when a person says to a manufacturer—such as a shoemaker, coppersmith, or others—"make me a shoe, or a vessel made of leather or copper, from your own material for such and such a price," and he specifies the type, quantity, and description of what is to be made, and the manufacturer says, "Yes."<sup>1</sup>

The majority of Ḥanafī jurists hold that the manufacturing contract is permissible based on juristic preference (*istiḥsān*). The conditions for its permissibility are: clarification of the type, kind, quantity, and description of the manufactured item, because it cannot become known otherwise. So that the item is among those commonly dealt with among people (such as iron or lead vessels, copper, glass, shoes, sandals, iron bridles for animals, sword blades, knives, etc.). There is no term (deadline) stipulated. If a term is stipulated for *Istisna'*, it becomes a Salam contract (forward sale). This is the opinion of Abū Ḥanīfa. However, Abū Yūsuf and Muḥammad said: This is not a condition, and it remains *Istisna'* in all cases, whether a term is stipulated or not.<sup>2</sup>

Based on these conditions, the classification of the contract for the sale of real estate off-plan as a manufacturing contract is excluded according to Abū Ḥanīfa's view, because stipulating a term makes the manufacturing contract a Salam contract in his opinion, and it is unimaginable to conclude a sale off-plan contract without stipulating a term.

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<sup>1</sup> Alaa al-Din Abi Bakr bin Mas'ud al-Kāsānī, *Badā'i' al-Ṣanā'i' fī Tartīb al-Sharā'i'*, Dar Al-Kutub Al-Ilmiyyah, 2nd ed., 1406 AH, 1986, Vol. 5, p. 2.

<sup>2</sup> Alaa al-Din Abi Bakr bin Mas'ud al-Kāsānī, *Badā'i' al-Ṣanā'i' fī Tartīb al-Sharā'i'*, Previous Reference, Vol. 5, p. 3.

The same issue arises with the relying opinion (*al-mu'tamad*) of the Ḥanafī school, which is that the manufacturing contract is binding on the manufacturer but not on the customer (*mustaṣni'*). The author of *Badā'i' al-Ṣanā'i'* says: "As for the nature of manufacturing: it is a contract that is non-binding before the work begins on both sides, without dispute, such that each party has the option to withdraw before the work begins... like a sale in which the option (*khiyār*) is stipulated for both parties: each has the right to rescind; because analogical deduction (*qiyās*) would require it not to be permissible... And after the completion of the work, but before the customer sees it, it is likewise, such that the manufacturer has the right to sell it to whomever he wishes... However, if the manufacturer presents the item with the stipulated description, the manufacturer's option is waived, but the customer retains the option; because the manufacturer is selling something he has not seen, so he has no option, while the customer is buying something he has not seen, so he retains the option... This is the ruling according to the apparent narration (*ẓāhir al-riwāyah*) from Abū Ḥanīfa, Abū Yūsuf, and Muḥammad."<sup>1</sup>

This also does not align with what legal scholars have affirmed: that the contract for the sale of real estate off-plan is a bilaterally binding contract, a position also adopted by the Islamic Fiqh Academy Council. In this regard, Al-Bouti sees the rectification of housing acquisition through the manufacturing contract as questionable, stating: "As for what the Islamic Fiqh Academy Council concluded—considering manufacturing binding and the permissibility of stipulating a term in it... and their inclusion of the issue of

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<sup>1</sup>Alaa al-Din Abi Bakr bin Mas'ud al-Kāsānī, *Badā'i' al-Ṣanā'i' fī Tartīb al-Sharā'i'*, Previous Reference, Vol. 5, pp. 3, 4.



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(selling houses off-plan in installments) under the manufacturing contract—it is contrary to the rules of the Ḥanafīs, and requires an explanation of their reliance for this."<sup>1</sup>

### ***2.3.2. The Contract for the Sale of Real Estate Off-Plan is a Sale of a Described Item in One's Liability***

Some researchers suggest that the contract for the sale of real estate off-plan can be classified on the basis of the sale of a described item in one's liability (*bay' mawṣūf fī al-dhimmah*). This refers to the sale of an item that is absent from the contract session, provided that the seller describes it to the buyer with a description that clearly reveals the sold item.<sup>2</sup>

In the view of the proponents of this opinion, the subject matter of the contract is precisely defined in its specifications, which negates uncertainty (*jahāla*) and prevents dispute. Similarly, the price is fixed, with a portion paid in advance and the rest in installments. Since this contract is something people need, the jurisprudential maxim applies: "Need is treated like necessity."<sup>3</sup>

This is the conclusion favored by Dr. Masoud Aboud Abd Al-Moneim Arrabi, who stated: "The most likely classification, after this long journey, is to classify it—the

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<sup>1</sup>Muhammad Tawfiq Ramadan Al-Bouti, *Common Sales and the Impact of the Sold Item's Controls on their Legality*, Previous Reference, p. 185.

<sup>2</sup>Muhammad bin Abd Al-Karim Al-Isa, *Delay and Its Rulings in Islamic Jurisprudence, A Comparative Jurisprudential Study*, 1st ed., Maktabat Al-Rushd, 1424, 2003, Cairo, p. 475.

<sup>3</sup>Omar Abd Allah Kamel, *The Major Jurisprudential Maxims and Their Impact on Financial Transactions*, PhD Thesis, Faculty of Arabic and Islamic Studies, Al-Azhar Al-Sharif University, Cairo, n.d., pp. 296, 297.

sale of real estate off-plan — as the sale of a described item in one's liability."<sup>1</sup>

Regarding the ruling on the sale of a described item in one's liability (*bay' mawṣūf fī al-dhimmah*), there are two opinions among scholars: the Ḥanafīs,<sup>2</sup> the Mālikīs,<sup>3</sup> some of the Shāfi'īs (though most disagree),<sup>4</sup> and the Ḥanbalīs (in the soundest narration) hold that it is permissible. One narration from the Ḥanbalīs holds that the sale of a specific item described in one's liability is not permissible.<sup>5</sup>

It is worth noting here that those who permit the sale of a described item in one's liability also permitted the postponement of the price, and furthermore, they considered it impermissible to stipulate cash payment in advance. It is stated in *Al-Risāla*: "There is no harm in the sale of an absent thing based on a description, and one should not pay cash for it under stipulation, unless its **location is close** or it is something whose change is

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<sup>1</sup>Masoud About Abd Al-Moneim Arrabi, *The Contract for Sale Off-Plan: A Comparative Jurisprudential Study*, Journal of Jurisprudential and Legal Research, Faculty of Sharia and Law in Damanhour, Issue 48, 2025, p. 2591.

<sup>2</sup>Alaa al-Din Abu Bakr bin Ahmad Al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 2nd ed., Dar Al-Kutub Al-'Ilmiyya, 1406 AH, 1986, Vol. 5, p. 163.

<sup>3</sup>Abu Muhammad Abd Al-Wahhab bin Ali bin Nasr Al-Baghdadi, *Al-Ishraf 'ala Nukat Masa'il Al-Khilaf*, edited by Al-Habib bin Tahir, 1st ed., Dar Ibn Hazm, 1420 AH, 1999, Vol. 2, p. 52.

<sup>4</sup>Shams al-Din Muhammad bin Muhammad Al-Khatib Al-Shirbīnī, *Mughnī Al-Muḥtāj ilā Ma'rifat Ma'ānī Alfāz Al-Minhāj*, Dar Ihya' Al-Turath Al-'Arabi, Beirut, Vol. 2, p. 18; Shams al-Din Muhammad bin Abi Al-Abbas Ahmad bin Hamza Shihab al-Din Al-Ramli, *Nihāyat Al-Muḥtāj ilā Sharḥ Al-Minhāj*, Dar Ihya' Al-Turath Al-'Arabi, Beirut, Vol. 3, p. 402.

<sup>5</sup>Shams al-Din Abu Abd Allah Muhammad bin Muflīh Al-Maqdisi, *Al-Furū'*, 3rd ed., 'Alam Al-Kutub, Beirut, 1402 AH, Vol. 4, pp. 21, 22; Abu Muhammad Abd Allah bin Ahmad bin Muhammad bin Qudāmah, *Al-Mughnī*, 3rd ed., Dar Al-Kitab Al-'Arabi, Beirut, 1403 AH, Vol. 4, p. 82.



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unlikely – such as a house, land, or trees – in which case cash payment is permissible."<sup>1</sup>

It is stated in *Al-Mukhtaṣar Al-Fiqhī*: "The sale of an absent thing based on a description is permissible, but cash payment in advance is not permissible in it."<sup>2</sup>

They also stated that the contract becomes **binding** if the seller delivers the item according to the agreed-upon description: in *Umdat Al-Qārī* (commentary on *Ṣaḥīḥ Al-Bukhārī*): "And from this is the sale of an absent thing based on a description. If it is found as described, it becomes binding on the buyer, and he has no option when he sees it. If it is on a different description, then he has the option."<sup>3</sup>

In *Bidayat Al-Mujtahid*: "And according to Malik, if it is delivered according to the description, it is binding."<sup>4</sup>  
All this aligns with the nature of the contract for the sale of real estate off-plan, as established by laws: that the price is deferred and the contract is bilaterally binding.

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<sup>1</sup>Abu Muhammad Abd Allah bin (Abi Zayd) Abd Al-Rahman Al-Nafzawī, *Al-Qayrawānī, Al-Risāla*, n.ed., Dar Al-Fikr, n.d., p. 107.

<sup>2</sup>Muhammad bin Muhammad Ibn Arfa Al-Warḡhamī Al-Tūnisī, *Al-Mukhtaṣar Al-Fiqhī li-Ibn 'Arafa*, editor: Hafiz Abd Al-Rahman Muhammad Khair, 1st ed., Mu'assasat Khalaf Ahmad Al-Khabtoor lil-'A'mal Al-Khayriyya, 1435 AH, 2014, Vol. 5, p. 143.

<sup>3</sup>Badr al-Din Abu Muhammad Mahmud bin Ahmad Al-Ayni, *Umdat Al-Qārī Sharḥ Ṣaḥīḥ Al-Bukhārī*, n.ed., Dar Ihya' Al-Turath Al-'Arabi, Beirut, Vol. 11, p. 267.

<sup>4</sup>Abu Al-Walid Muhammad bin Ahmad bin Muhammad bin Ahmad bin Rushd Al-Qurtubi, *Bidayat Al-Mujtahid wa Nihāyat Al-Muqtaṣid*, n.ed., Dar Al-Hadith, 1425 AH, 2004, Cairo, Vol. 3, p. 174.

### 2.3.3. *The Contract for the Sale of Real Estate Off-Plan is a Sale of a Non-Existent Item*

The proponents of this view argue that the sale off-plan is a type of sale of a non-existent item (*bay' ma'dūm*), the meaning of which applies to any contract where the subject matter is non-existent at the time of contracting.<sup>1</sup> In this sense, it is the opposite of what is existent.<sup>2</sup>

It is important to note that jurists do not discuss absolute non-existence (which has no existence conceptually or tangibly); rather, they discuss what exists in the mind by its name and description, but does not exist concretely in the sensible reality.<sup>3</sup>

The majority of jurists held that for a contract to be valid, the subject matter of the contract must be existent at the time of contracting. Therefore, contracting for a non-existent item is invalid, as is contracting for something whose existence is impossible, such as contracting with a doctor to treat a deceased patient.<sup>4</sup>

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<sup>1</sup>Abd Al-Wahhab Khallāf, *Ilm Uṣūl Al-Fiqh*, 8th ed., Maktabat Al-Da'wa, Dar Al-Qalam, n.d., Vol. 1, pp. 80, 81.

<sup>2</sup>Al-Kāsānī Alaa al-Din Abu Bakr bin Mas'ud, *Badā'i' al-Ṣanā'i' fi Tartīb al-Sharā'i'*, 2nd ed., Dar Al-Kutub Al-'Ilmiyya, Beirut, 1406 AH, 1986, Vol. 5, p. 138.

<sup>3</sup>Muhammad Hamad Abd Al-Hamid and Ahmad Zaki Al-Rabā'ia, 'The Maxim 'The Non-Existent by Sharia is Like the Non-Existent by Sense' and Its Juristic and Usūlī Applications, *Dirasat: Sharia and Law Sciences*, Faculty of Jurisprudential and Legal Studies, Aal al-Bayt University, Mafraq, Jordan, Vol. 39, Issue 1, 2012, p. 35.

<sup>4</sup>Wahbah Al-Zuhayli, *Al-Fiqh Al-Islami wa Adillatuh*, 4th ed., Dar Al-Fikr, Syria, Vol. 7, n.d., p. 68; Ismat Abd Al-Majid Bakr, *The Theory of Contract in Arab Laws*, n.ed., Dar Al-Kutub Al-'Ilmiyya, Beirut, n.d., p. 374.



Al-Nawawi reported a consensus (Ijmā‘) on the invalidity of selling a non-existent item.<sup>1</sup>The reasoning (‘illa) for prohibiting the sale of a non-existent item is that it involves uncertainty (*jahāla*) leading to risk (*gharar*), which results in harm and dispute, and the unlawful consumption of another's wealth.<sup>2</sup>

In contrast, Ibn Taymiyyah and Ibn Al-Qayyim held the view that the sale of a non-existent item is permissible, and that the prohibition of selling non-existent things was due to the reason of risk (*gharar*) and not non-existence itself. They asserted there is no evidence in the Qur'an or the Sunnah of the Prophet that the sale of a non-existent item is impermissible. In fact, the Lawgiver validated the sale of a non-existent item in some instances, such as the permissibility of selling fruit after its condition is established (*badw al-ṣalāh*) on the condition that it remains on the tree.<sup>3</sup>

However, the proponents of this view – that the sale off-plan is classified as a sale of a non-existent item – differed on its ruling: Muhammad Tawfiq Ramadan Al-Bouti considered

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<sup>1</sup>Al-Nawawi Abu Zakariya Muhyi al-Din Yahya bin Sharaf, Al-Majmu' Sharh Al-Muhadhdhab, n.ed., Dar Al-Fikr, n.d., Vol. 9, p. 258.

<sup>2</sup>Ibn Abd Al-Barr Omar Yusuf Al-Qurtubi, Al-Tamhid li-mā fi Al-Muwaṭṭa' min Al-Ma'āni wa Al-Asānīd, Vol. 13, n.ed., Ministry of General Endowments and Islamic Affairs, Morocco, 1387 AH, p. 315; Nur al-Din bin Mukhtar Al-Khadimi, Ilm Al-Maqasid Al-Shar'iyyah, 1st ed., Al-Obaikan Library, Riyadh, 1421 AH, 2001, Vol. 1, p. 115.

<sup>3</sup>Ibn Taymiyyah Taqi al-Din Abu Al-Abbas Ahmad Al-Harrani, Majmu' Al-Fatawa, edited by Abd Al-Rahman bin Muhammad bin Qasim, n.ed., King Fahd Complex, 1416 AH, 1995, Vol. 20, p. 544; Ibn Qayyim Al-Jawziyya Muhammad bin Abi Bakr, I'lām Al-Muwaqqi'in 'an Rabb Al-'Ālamīn, edited by Muhammad Abd Al-Salam Ibrahim, 1st ed., Dar Al-Kutub Al-'Ilmiyya, Beirut, 1411 AH, 1991, Vol. 2, pp. 7, 8.

it a form of the sale of a non-existent item that jurists have unanimously agreed to prohibit.<sup>1</sup>

This position is also held by Muhammad Sakhāl Al-Majājī, who said: "We can infer from the permissibility of the sale off-program (*al-bay' alā al-barnāmaj*) the permissibility, a fortiori, of [the sale off-plan] regarding modern manufactured goods, buildings, and others, provided that the design and information related to the sold item are documented in the manufacturing file, and the seller limits himself to showing the file to the buyer for the purpose of identifying the sold item. Nevertheless, the sale of buildings before their completion falls under another topic, which is the sale of a thing non-existent at the time of contracting."<sup>2</sup>

Conversely, Na'imi Abd Al-Rahman argues that the sale off-plan is an independent contract in Islamic Sharia and is a type of permissible sale of a non-existent item, similar to Salam, manufacturing, or sale off-program. He views it as a compound contract consisting of two contracts: sale and contract of work/construction (*Muqāwala*). He supports the permissibility of this contract with a set of evidence, including: the fundamental principle in contracts is permissibility (*ibāḥa*), so the original state remains until evidence proves otherwise.

This contract carries the legitimate benefit (*maṣlaḥa*) intended by the Lawgiver, which is to bring about benefits and ward off harm. Thus, this contract does not violate any fundamental principle or text of the religion.

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<sup>1</sup>Muhammad Tawfiq Ramadan Al-Bouti, Common Sales and the Impact of the Sold Item's Controls on their Legality, Previous Reference, p. 185.

<sup>2</sup>Muhammad Sakhāl Al-Majājī, Rulings of the Contract of Sale in Mālikī Islamic Jurisprudence, 1st ed., Dar Ibn Hazm, 1422 AH, 2001, Beirut, Lebanon, p. 135.



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The maxim "hardship brings ease (*al-mashaqqa tajlibu al-taysir*)" applies, as housing has become an immense difficulty for people, and this contractual form is an easement and facilitation for obtaining a dwelling to shelter a person and their family.<sup>1</sup>

From the foregoing, it can be concluded that the contract for the sale of real estate off-plan is a form or an application of the permissibility of dealing with future things.

## Conclusion

Through an approach to the topic of the legal and juristic nature of the contract for the sale of real estate off-plan, as a comparative study between Algerian Law and Islamic Jurisprudence with detailed brevity, the following results and recommendations were reached:

### Firstly - Results

1. The contract for the sale of real estate off-plan is a **formal contract** relating to a property under construction or to be created and erected in the future, whether for residential, professional, or commercial use. The seller, in their capacity as a real estate developer, undertakes the execution in accordance with **specified deadlines** and **specific models** conforming to building and urban planning rules, and the **transfer of ownership** of the land and building to the subscriber (buyer), in exchange for a

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<sup>1</sup>Na'imi Abd Al-Rahman, Sale Off-Plan in Light of Law 11-04: Its Legal Nature and Juristic Classification, Previous Reference, pp. 347, 348.

- cash price which the buyer commits to paying in **installments** according to the construction stages and progress of the work, calculated from the sale price.
2. The Algerian legislator regulated the contract for the sale of real estate off-plan despite its novelty, controlling it with a set of texts, the most important of which is Law 11-04, with Article 28 providing its definition.
  3. The opinions of legal researchers and jurists varied regarding the nature of the contract for sale off-plan: in terms of contract type: Some considered it an ordinary sale contract; another view held it to be a contract of work/construction (*muqāwala*); a third direction saw it as a mixture of sale and contract of work; and others included it under the sale of future things. In terms of its civil or commercial nature: Some considered it a civil contract, others a commercial contract, and a third view saw it as a mixed or compound contract.
  4. The contract for sale off-plan in Algerian legislation has a special nature that distinguishes it from an ordinary sale. To avoid confusion, the Algerian legislator created a special standard form for the sale off-plan contract, as stipulated by Article 01 of Executive Decree No. 94-58. At the same time, it is not excluded from the scope of sale, a fact underscored by the legislator's own naming of it as "sale off-plan." It is a sale distinguished by a special system subject to the provisions of Law 11-04 and Executive Decree 94-58, with any unaddressed provisions being subject to and governed by the Civil Code as the general law.



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5. In terms of its civil and commercial nature in Algerian legislation, the contract for the sale of real estate off-plan is considered a mixed or dual contract: it is a commercial act for the real estate developer (seller), to which the rules of Commercial Law apply, and a civil act for the subscriber (buyer), to which the rules of Civil Law apply in this case.
6. The opinions of researchers and Sharia jurists differed regarding the Juristic (Sharia) classification of the sale off-plan contract: one opinion included it under the Istisna' contract; another direction classified it as the sale of a non-existent item (*bay' al-ma'dūm*); and a third view considered it a sale of a described item in one's liability (*bay' mawṣūf fī al-dhimmah*).
7. The contract for the sale of real estate is classified in Islamic jurisprudence as an manufacturing contract only if the agreement on the price is in advance, in order to avoid the view of the Mālikīs, Shāfi'īs, and Ḥanbalīs regarding the impermissibility of price deferral, and the view of Abū Ḥanīfa that stipulating a term makes it a Salam contract.
8. The relying opinion among the Ḥanafīs is the non-binding nature of the manufacturing contract on the customer (*mustaṣni'*), whereas legal scholars view the sale of real estate off-plan as a bilaterally binding contract, which precludes its classification as an Istisna' contract.
9. The subject matter of the sale off-plan is a form of the sale of a future thing. In law, it is the sale of something non-existent at the time of contracting but capable of existing in the future, which corresponds

- to the meaning of the sale of a non-existent item in Islamic jurisprudence.
10. Article 92 of the Algerian Civil Code permitted dealing with future things, with the sole exception of dealing with the estate of a living person. The contract for sale off-plan is a form or application of the permissibility of dealing with future things.
  11. The majority of Sharia jurists view the sale of a non-existent item as invalid due to the reason of non-existence, which leads to uncertainty (*jahāla*) and risk (*gharar*), except for what is excluded by the Prophetic traditions, such as the Salam and Istisna' contracts. In contrast, Ibn Taymiyyah and Ibn Al-Qayyim permit the sale of a non-existent item unless there is excessive risk (*gharar fāhish*).
  12. The position of Ibn Taymiyyah and Ibn Al-Qayyim aligns with the position of the Algerian legislator in permitting the sale of a future thing, which corresponds to the sale of a non-existent item in Islamic Sharia.
  13. The contract for sale off-plan is a type of sale, an application of dealing with future things in law, and a form of the sale of a non-existent item in Sharia; however, it is considered a special contract with a distinctive nature.

### **Secondly - Recommendations**

- Establishment of Islamic banks that can grant financial loans without usurious interest to finance housing projects.
- Intensification of studies on innovated contracts and their presentation to Sharia jurists, and their



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classification in a way that is consistent and compliant with the spirit and principles of Islamic Sharia, thereby affirming religious identity and legislative independence.

- Establishment of Sharia and legal research laboratories and workshops specialized in real estate transactions to provide legal solutions and mechanisms that align with the principles of Islamic Sharia to alleviate the housing crisis.

## References

The provided list is a comprehensive bibliography, primarily focused on **Algerian Law** and **Islamic Jurisprudence (Fiqh)**, particularly concerning the topic of the **Sale of Real Estate Off-Plan (Bay' al-'Aqār 'alā al-Taṣāmīm)**.

### Firstly - Laws, Ordinances, and Executive Decrees

1. **Executive Decree 94-58** dated 25 Ramaḍān 1414 AH, corresponding to March 7, 1994, related to the **model contract for sale based on designs** applied in the field of real estate promotion. Official Gazette, Issue 13, published March 9, 1994.
2. **Law 08-09** dated 18 Ṣafar 1429 AH, corresponding to February 25, 2008, concerning the **Code of Civil and Administrative Procedure**. Official Gazette, Issue 21, published 17 Rabi' ath-Thānī 1429 AH, corresponding to April 23, 2008.

3. **Law 11-04** dated February 17, 2011, which determines the rules governing **real estate promotion activity**. Official Gazette No. 14, published March 6, 2011.
4. **Ordinance 75/58** dated September 26, 1975, containing the amended and supplemented **Civil Code**. Official Gazette, Issue 78, published September 30, 1975.
5. **Resolution No. 52/01/6** of the **Islamic Fiqh Council** (OIC) at its sixth conference session in Jeddah, Kingdom of Saudi Arabia, from March 14–20, 1990. Journal of Islamic Jurisprudence, Vol. 6.

### Secondly - Works on Legal/Juristic Foundations and Objectives (Uṣūl and Maqāṣid)

1. **Al-Khadimi, Nur al-Din bin Mukhtar**. Science of Juristic Objectives ('Ilm al-Maqāṣid ash-Shar'iyah). 1st ed., Al-Obaikan Library, Riyadh, 1421 AH, 2001, Vol. 1.
2. **Khallāf, Abdul Wahab**. Science of the Foundations of Jurisprudence ('Ilm Uṣūl al-Fiqh). 8th ed., Maktabat ad-Da'wah, Dār al-Qalam, n.d., Vol. 1.

### Thirdly - Works of Jurisprudence (Fiqh)

#### A - Ḥanafī Jurisprudence

1. **Al-ʿAynī, Badr al-Dīn Abū Muḥammad Maḥmūd bin Aḥmad**. 'Umdat al-Qārī Sharḥ Ṣaḥīḥ al-Bukhārī. n.ed., Dār Iḥyā' al-Turāth al-ʿArabī, Beirut, Vol. 11.
1. **Al-Baghdādī, Abū Muḥammad ʿAbd al-Waḥḥāb bin ʿAlī bin Naṣr**. Al-Ishrāf ʿalā Nukat Masā'il al-Khilāf. Ed. Al-Ḥabīb bin Ṭāhir, 1st ed., Dār Ibn Ḥazm, 1420 AH, 1999, Vol. 2.



Soumission : 10/04/2025 Acceptation : 20/07/2025 Publication : 25/08/2025

2. **Al-Dasūqī, Muḥammad bin Aḥmad bin ‘Arafah.** Ḥāshiyat al-Dasūqī ‘alā ash-Sharḥ al-Kabīr. Dār al-Fikr, n.ed., n.d., Vol. 3.
3. **Al-Jundī al-Mālikī, Khalīl bin Ishāq bin Mūsā, Diyā’ al-Dīn.** Al-Tawḍīḥ fī Sharḥ al-Mukhtaṣar al-Far’ī li-Ibn al-Ḥājjib. Ed. Aḥmad bin ‘Abd al-Karīm Najīb, 1st ed., Markaz Najibawayh lil-Makhtūtāt wa Khidmat al-Turāth, 1429 AH, 2008, Vol. 6.
2. **Al-Kāsānī, ‘Alā’ al-Dīn Abū Bakr bin Aḥmad.** Badā’i’ aṣ-Ṣanā’i’ fī Tartīb ash-Sharā’i’. 2nd ed., Dār al-Kutub al-‘Ilmiyyah, 1406 AH, 1986, Vol. 5.
4. **Al-Majājī, Muḥammad Sakhāl.** Aḥkām ‘Aqd al-Bay’ fī al-Fiqh al-Islāmī al-Mālikī. 1st ed., Dār Ibn Ḥazm, 1422 AH, 2001, Beirut, Lebanon.
5. **Al-Qayrawānī, Abū Muḥammad ‘Abd Allāh bin (Abī Zayd) ‘Abd al-Raḥmān an-Nafzī.** Ar-Risālah. n.ed., Dār al-Fikr, n.d.

## B - Mālikī Jurisprudence

3. **Dāmād Afandī (‘Abd al-Raḥmān bin Muḥammad bin Sulaymān).** Majma’ al-Anhur fī Sharḥ Multaqā al-Abḥur. n.ed., Dār Iḥyā’ al-Turāth al-‘Arabī, n.d., Vol. 2.
6. **Ibn ‘Abd al-Barr, Omar Yusuf al-Qurṭubī.** Al-Tamhīd li-mā fī al-Muwaṭṭa’ min al-Ma’ānī wa al-Asānīd. Vol. 13, n.ed., Ministry of General Endowments and Islamic Affairs, Morocco, 1387 AH.
7. **Ibn ‘Arafah al-Warghamī al-Tūnisī, Muḥammad bin Muḥammad.** Al-Mukhtaṣar al-Fiqhī li-Ibn ‘Arafah. Ed. Ḥāfiz ‘Abd al-Raḥmān Muḥammad Khayr, 1st ed., Mu’assasat Khalaf Aḥmad al-Khabtūr lil-‘māl al-Khayriyyah, 1435 AH, 2014, Vol. 5.

8. **Ibn Rushd al-Qurṭubī, Abū al-Walīd Muḥammad bin Aḥmad.** Bidāyat al-Mujtahid wa Nihāyat al-Muqtaṣid. n.ed., Dār al-Ḥadīth, 1425 AH, 2004, Cairo, Vol. 3.
9. **Mālik bin Anas.** Al-Mudawwanah. 1st ed., Dār al-Kutub al-‘Ilmiyyah, 1415 AH, 1994, Vol. 3.

#### C - Shāfi‘ī Jurisprudence

1. **Al-Khaṭīb al-Shirbīnī, Shams al-Dīn Muḥammad bin Muḥammad.** Mughnī al-Muḥtāj ilā Ma‘rifat Ma‘ānī Alfāz al-Minhāj. Dār Iḥyā’ al-Turāth al-‘Arabī, Beirut, Vol. 2.
2. **Al-Nawawī, Abū Zakarīyā Muḥyī al-Dīn Yaḥyá bin Sharaf.** Al-Majmū‘ Sharḥ al-Muhadhdhab. n.ed., Dār al-Fikr, n.d., Vol. 9.
3. **Al-Nawawī, Abū Zakarīyā Muḥyī al-Dīn Yaḥyá bin Sharaf.** Rawḍat aṭ-Ṭālibīn wa ‘Umdat al-Muftīn. Ed. Zuhayr al-Shāwīsh, 3rd ed., Al-Maktab al-Islāmī, Beirut, Damascus, Amman, 1412 AH, 1991, Vol. 5, pp. 173, 174.
4. **Al-Ramlī, Shams al-Dīn Muḥammad bin Abī al-‘Abbās Aḥmad bin Ḥamzah Shihāb al-Dīn.** Nihāyat al-Muḥtāj ilā Sharḥ al-Minhāj. Dār Iḥyā’ al-Turāth al-‘Arabī, Beirut, Vol. 3.
5. **Al-Shāfi‘ī, Abū ‘Abd Allāh Muḥammad bin Idrīs.** Al-Umm. 2nd ed., Dār al-Fikr, Beirut, 1403 AH, 1983, Vol. 3.

#### D - Ḥanbalī Jurisprudence

1. **Ibn Mufliḥ al-Maqdisī, Shams al-Dīn Abū ‘Abd Allāh Muḥammad.** Al-Furū‘. 3rd ed., ‘Ālam al-Kutub, Beirut, 1402 AH, Vol. 4.



Soumission : 10/04/2025    Acceptation : 20/07/2025    Publication : 25/08/2025

2. **Ibn Qayyim al-Jawziyyah, Muḥammad bin Abī Bakr.** I'lām al-Muwaqqi'īn 'an Rabb al-'Ālamīn. Ed. Muḥammad 'Abd al-Salām Ibrāhīm, 1st ed., Dār al-Kutub al-'Ilmiyyah, Beirut, 1411 AH, 1991, Vol. 2.
3. **Ibn Qudāmah, Abū Muḥammad 'Abd Allāh bin Aḥmad bin Muḥammad.** Al-Mughnī. Dār al-Fikr, Beirut, Lebanon, 1997, Vol. 4.
4. **Ibn Qudāmah, Abū Muḥammad 'Abd Allāh bin Aḥmad bin Muḥammad.** Al-Mughnī. 3rd ed., Dār al-Kitāb al-'Arabī, Beirut, 1403 AH, Vol. 4.
5. **Ibn Qudāmah, Abū Muḥammad 'Abd Allāh bin Aḥmad bin Muḥammad.** Al-Mughnī. Maktabat al-Qāhirah, 1388 AH, 1968, Vol. 4.
6. **Ibn Taymiyyah, Taqī al-Dīn Abū al-'Abbās Aḥmad al-Ḥarrānī.** Majmū' al-Fatāwá. Ed. 'Abd al-Rahmān bin Muḥammad bin Qāsim, n.ed., King Fahd Complex, 1416 AH, 1995, Vol. 20.

#### E - General Fiqh Works

1. **'Afānah, Ḥusām al-Dīn.** Fatāwá Yas'alūnak. 1st ed., Maktabat Dandīs, 2007, Palestine.
2. **Al-Būṭī, Muḥammad Tawfīq Ramaḍān.** Common Sales and the Impact of the Sold Item's Controls on their Legality (Al-Buyū' ash-Shā'i'ah wa Athar Ḍawābiṭ al-Mabī' 'alá Shar'iiyyatihā). 6th ed., Dār al-Fikr, Damascus, Syria; Dār al-Fikr al-Mu'āshir, Beirut, Lebanon, 2010.
3. **Al-'Īsá, Muḥammad bin 'Abd al-Karīm.** Deferral and its Rulings in Islamic Jurisprudence (Al-Ta'khīr wa Aḥkāmuhu fī al-Fiqh al-Islāmī). Comparative Fiqh Study, 1st ed., Maktabat al-Rushd, 1424 AH, 2003, Cairo.

4. **Al-Kubaysī, Sa‘d al-Dīn Muḥammad.** Contemporary Financial Transactions in the Light of Islam (Al-Mu‘amalāt al-Māliyyah al-Mu‘āshirah fī Ḍaw’ al-Islām). 1st ed., 1423 AH, 2002.
5. **Al-Nashwī, Nāṣir Aḥmad Ibrāhīm.** Rulings of the Istisna‘ Contract in Islamic Jurisprudence (Aḥkām ‘Aqd al-Istiṣnā‘ fī al-Fiqh al-Islāmī). n.ed., Dār al-Jāmi‘ah al-Jadīdah lil-Nashr, Alexandria, Egypt, 2005.
6. **Al-Zuḥaylī, Wahbah.** Contemporary Financial Transactions (Mu‘amalāt Māliyyah Mu‘āshirah) (Research, Fatwas, and Solutions). 3rd ed., Dār al-Fikr, 2006.
7. **Al-Zuḥaylī, Wahbah.** Islamic Jurisprudence and its Proofs (Al-Fiqh al-Islāmī wa Adillatuh). 4th ed., Dār al-Fikr, Syria, Vol. 7, n.d.

#### **Fourthly - Law Books**

1. **‘Alī, ‘Alā Ḥusayn.** Contract for the Sale of Buildings Under Construction (‘Aqd Bay‘ al-Mabānī Taḥta al-Inshā‘). Legal study, 1st ed., Zayd Publications, n.p., 2011.
2. **Al-Sa‘dī, Muḥammad Ṣabrī.** Commentary on the Algerian Civil Law (Sharḥ al-Qānūn al-Madanī al-Jazā’irī) (General Theory of Obligations). 2nd ed., Dār al-Hudá, ‘Ayn Malīlah, Algeria, Vol. 1, 2004.
3. **Bakr, ‘Iṣmat ‘Abd al-Majīd.** The Theory of Contract in Arab Laws (Naẓariyyat al-‘Aqd fī al-Qawānīn al-‘Arabiyyah). n.ed., Dār al-Kutub al-‘Ilmiyyah, Beirut, n.d.
4. **Balḥāj, Al-‘Arabī.** The General Theory of Obligation in Algerian Civil Law (An-Naẓariyyah al-‘Āmmah lil-Iltizām fī al-Qānūn al-Madanī al-Jazā’irī). National



Soumission : 10/04/2025 Acceptation : 20/07/2025 Publication : 25/08/2025

Office of University Publications (OPU), Algiers, Vol. 1, 2001.

5. **Bannāsī, Shawqī.** The Real Estate Promotion Contract: Right Reservation Contract – Sale Off-Plan Contract (‘Aqd al-Tarqiyah al-‘Aqāriyyah, ‘Aqd Ḥifz al-Ḥaqq - ‘Aqd al-Bay’ ‘alā al-Taṣāmīm). In light of Law 11-04 which determines the rules of real estate promotion activity, Dār al-Khaldūniyyah, 2019.
6. **La’shab, Maḥfūz bin Ḥāmid.** The Contract of Adhesion in Algerian and Comparative Civil Law (‘Aqd al-Idh‘ān fī al-Qānūn al-Madanī al-Jazā’irī wa al-Muqāran). National Book Enterprise (ENAL), 1990.
7. **Sībīl Ja’far Ḥājji ‘Umar.** Guarantees of the Contract for the Sale of Buildings Under Construction (Ḍamānāt ‘Aqd Bay’ al-Mabānī Taḥta al-Inshā’). Comparative study, 1st ed., Dār Wā’il, Amman, 2014.
8. **Zahrah, Muḥammad al-Mursī.** Sale of Buildings Under Construction (Bay’ al-Mabānī Taḥta al-Inshā’). Comparative study between Egyptian, French, and Kuwaiti Civil Law, 1st ed., Publisher Sayyid ‘Abd Allāh Wahbah, Cairo, Egypt, 1987.

#### **Fifthly - Academic Journals and Symposia**

1. **‘Abd al-Ḥamīd, Muḥammad Ḥamad and Aḥmad Zakī al-Rubay’ah.** The Juristic Rule: "Non-Existent by Sharia is Like Non-Existent by Sense" and its Foundational and Fiqh Applications (Qā’idat al-Ma’dūm Shar‘an ka al-Ma’dūm Ḥissan wa Taṭbīqātuhā al-Uṣūliyyah wa al-Fiqhiyyah). Dirāsāt ‘Ulūm ash-Sharī‘ah wa al-Qānūn, College of Fiqh and Legal Studies, Al al-Bayt University, Mafrāq, Jordan, Vol. 39, Issue 1, 2012.

2. **Al-Farfūr, Muḥammad ‘Abd al-Laṭīf Ṣāliḥ.** The Impact of Istisna‘ on Revitalizing the Industrial Movement (Athar al-Istiṣnā‘ fī Tanṣīṭ al-Ḥarakah aṣ-Ṣinā‘iyyah). Research published in Majallat al-Fiqh al-Islāmī, Vol. 7.
3. **Al-Nu‘aymī, Ḍuḥá Muḥammad Sa‘īd.** The Concept of Sale of Real Estate Off-Plan and its Legal Classification (Mafhūm Bay‘ al-‘Aqār ‘alá al-Kharīṭah wa Takyīfuhu al-Qānūnī). Majallat ash-Sharī‘ah wa al-Qānūn, College of Law, UAE University, Issue 49, 2012.
4. **Al-Zuḥaylī, Wahbah.** The Istisna‘ Contract (‘Aqd al-Istiṣnā‘). Research published in Majallat al-Fiqh al-Islāmī, Vol. 7.
5. **Faghrūr, Rābiḥ.** The Position of Islamic Jurisprudence on the Contract for the Sale of Real Estate Off-Plan in Algerian Legislation (Mawqif al-Fiqh al-Islāmī min ‘Aqd Bay‘ al-‘Aqār ‘alá al-Taṣāmīm fī al-Tashrī‘ al-Jazā‘irī). Majallat al-Buḥūth al-‘Ilmiyyah wa al-Dirāsāt al-Islāmiyyah, Vol. 11, Issue 5, 2019.
6. **Khawāthirah, Sāmiyah.** Innovated Rulings for Regulating the Sale Off-Plan Contract in Law 11-04 (Al-Aḥkām al-Mustaḥdathah li-Tanzīm ‘Aqd al-Bay‘ ‘alá al-Taṣāmīm fī al-Qānūn 11-04). Majallat Buḥūth, Vol. 1, Issue 14, 2020.
7. **Lamūsakh, Muḥammad.** Legal Guarantees in the Sale Off-Plan Contract (Aḍ-Ḍamānāt al-Qānūniyyah fī ‘Aqd al-Bay‘ ‘alá al-Taṣāmīm). Majallat al-Muntadá al-Qānūnī, Issue 6, n.d.
8. **Nu‘aymī, ‘Abd al-Raḥmān.** Sale Off-Plan in Light of Law 11-04: Its Legal Nature and Juristic Classification (Al-Bay‘ ‘alá al-Taṣāmīm fī Zill al-Qānūn 11-04



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Tabī‘atuhu al-Qānūniyyah wa Takyīfuhu ash-Shar‘ī). Majallat al-Midād, Ziane Achour University, Djelfa, Vol. 4, Issue 1, 2016.

9. **Sa‘īd, Muḥammad Muḥammad al-Quṭb Mus‘ad.** Rulings of the Sale Off-Plan Contract (Aḥkām ‘Aqd al-Bay‘ ‘alá al-Kharīṭah). Majallat al-Dirāsāt al-Qānūniyyah wa al-Iqtišādiyyah, Faculty of Law, Sadat City University, Egypt, Vol. 6, Issue 1, 2020.
10. **‘Urābī, Mas‘ūd ‘Abbūd ‘Abd al-Mun‘im.** The Sale Off-Plan Contract (‘Aqd al-Bay‘ ‘alá al-Kharīṭah). Comparative Fiqh study, Majallat al-Buḥūth al-Fiqhiyyah wa al-Qānūniyyah, College of Sharia and Law in Damanhūr, Al-Azhar University, Issue 48, 2025 (Twice listed).
11. **Zūbah, ‘Izz al-Dīn.** Specificity of the Sale Off-Plan Contract from the Ordinary Sale Contract (Khuṣūsiyyat ‘Aqd Bay‘ al-‘Aqār ‘alá al-Taṣāmīm ‘an ‘Aqd al-Bay‘ al-‘Ādī). National Symposium on the Problems of Urban Real Estate and their Impact on Development in Algeria, held on February 17–18, 2013, Faculty of Law and Political Science, University of Muḥammad Khidr Biskra.

### Sixthly - Theses and Dissertations

1. **‘Alī bin ‘Alī.** The Sale Off-Plan Contract in Light of Law 11-04 (‘Aqd al-Bay‘ ‘alá al-Taṣāmīm fī Zill al-Qānūn 11-04). Master's Thesis in Law, University of Boumerdès, 2015–2016.
2. **‘Ayyāshī, Sha‘bān.** Contract for the Sale of Real Estate Based on Designs (‘Aqd Bay‘ al-‘Aqār Binā‘an ‘alá al-Taṣāmīm). Comparative study between Algerian and French Law, Ph.D. Dissertation in

- Private Law, University of Mentouri Constantine, 2011–2012.
3. **Bustah, Ḥussām al-Dīn.** The Legal System of the Sale Off-Plan Contract in Algerian Legislation (An-Nizām al-Qānūnī li-‘Aqd al-Bay’ ‘alā al-Taṣāmīm fī al-Tashrī‘ al-Jazā’irī). Master's Thesis in Law, University of Muḥammad Khidr Biskra, 2016–2017.
  4. **Bustah, Īmān.** Private Real Estate Promotion in the Field of Housing in Algerian Legislation (At-Tarqiyah al-‘Aqāriyyah al-Khāṣṣah fī Majāl al-Sakan fī al-Tashrī‘ al-Jazā’irī). Ph.D. Thesis in Law Sciences, University of Muḥammad Khidr Biskra, 2016–2017.
  5. **Dānī, Ḥamdānī.** The Legal System of the Contract for the Sale of Real Estate Off-Plan in Algerian Legislation (An-Nizām al-Qānūnī li-‘Aqd Bay’ al-‘Aqār ‘alā al-Taṣāmīm fī al-Tashrī‘ al-Jazā’irī). Master's Thesis in Private Law, University of Bouira, 2013.
  6. **Kāmil, ‘Umar ‘Abd Allāh.** The Major Juristic Maxims and their Impact on Financial Transactions (Al-Qawā‘id al-Fiḥiyyah al-Kubrā wa Atharuhā fī al-Mu‘āmalāt al-Māliyyah). Ph.D. Dissertation, Al-Azhar University, Cairo, n.d.
  7. **Kattāfī, Shaynāz, and Sulāf al-‘Iṭrāwī.** The Sale Based on Designs Contract in Light of Law 11-04 (‘Aqd al-Bay’ Binā’an ‘alā al-Taṣāmīm fī Zill al-Qānūn 11-04). Master's Thesis in Law, University of May 8, 1945, Guelma, 2018–2019.
  8. **Kattū, Lāmiyah.** The Sale Off-Plan Contract within the Framework of Law 11-04 Determining the Rules of Real Estate Promotion Activity (‘Aqd al-Bay’ ‘alā al-Taṣāmīm fī Iṭār al-Qānūn Raqm 11-04 al-Muḥaddid



Soumission : 10/04/2025    Acceptation : 20/07/2025    Publication : 25/08/2025

- li-Qawā'id Nashāṭ al-Tarqiyah al-'Aqāriyyah). Master's Thesis in Law, University of Mouloud Mammeri Tizi Ouzou, 2013.
9. **Nūwī, 'Aqīlah.** The Legal System of the Sale Based on Design Contract in Algerian Law (An-Nizām al-Qānūnī li-'Aqd al-Bay' Binā'an 'alá al-Tašmīm fī al-Qānūn al-Jazā'irī). Master's Thesis, University of Algiers (Ben Aknoun), 2004.
  10. **Saqqāy, Laylá, and Yāsmīnah Bin Nāfi'.** Contract for the Sale of Real Estate Based on Designs According to Law 11-04 ('Aqd Bay' al-'Aqār Binā'an 'alá al-Tašmīm Wifqan li-Qānūn 11-04). Master's Thesis in Private Law, University of Mouloud Mammeri Tizi Ouzou, 2013.