



The Decennial Liability of Real Estate Developers in Algerian Law

Dr: Meriem Yaghla

Faculty of Law and Political Sciences, University of Badji Mokhtar-Annaba, (Algeria).

E-mail: meriem.yaghla@univ-annaba.dz

Abstract:

The decennial liability is a legally presumed responsibility that applies to all individuals and entities involved in the construction and building sector. This liability has been regulated by mandatory provisions due to the serious consequences that arise from faulty construction on the buyer of the property, who is not required to prove fault. To protect the buyer, Algerian legislation has expanded the circle of individuals responsible under the decennial guarantee. This includes contractors, architects, technical controllers, real estate developers, and anyone else involved through a contract with the employer. However, the scope of the liability has been narrowed to cover only the construction of buildings, permanent structures, and installed equipment, and this guarantee lasts throughout the decennial period, starting from the final acceptance of the work.

Keywords: Decennial liability, Decennial guarantee, Contractor, architect, Property buyer, Faulty construction.

Received: 13 January 2025

Accepted: 03 April 2025

Published: 08 May 2025

Introduction:

Real estate development in Algeria has witnessed significant growth. This is clearly evident through the successive legal texts, starting with Law No. 86-07, dated March 4, 1986, related to real estate development¹ This law prioritized public real estate development. However, with the adoption of the 1989 Constitution, the law no longer aligned with Algeria's policy. As a result, Legislative Decree No. 93-03, dated March 1, 1993, concerning real estate activity, was issued²

This law opened the door for the private sector and changed the nature of civil companies that were engaged in real estate development, transforming them into commercial companies. As a result, real estate developers were granted the status of merchants.

To align the legal system with the developments in Algeria, this legislative decree was repealed due to the lack of mechanisms regulating the obligations of real estate developers. Consequently, Law No. 11-04, dated February 17, 2011, was enacted, establishing the rules governing real estate development³

To regulate real estate development activities and provide guarantees that protect the weaker party, one of the most significant of these guarantees is the establishment of the decennial liability for real estate developers — also known as the decennial guarantee — and for all participants in the construction process. This liability applies for a period of ten years in favor of the property buyer, or those in a similar position, and it is effective according to general rules from the actual and final delivery of the building. This is a result of the increasing complexity of the construction process, which corresponds to the rising risks of damage that now threaten the safety and security of buildings and structures.

Based on this, the legislator intervened to regulate the provisions of the decennial liability for those involved in the construction process through Law No. 11-04, as previously mentioned. In doing so, it often surpassed what is established in relation to civil liability rules enshrined in the Civil Code. Therefore, our choice of this topic stems from the following central issue:

- **What is the legal system governing the decennial liability established in specific provisions,**

and which is placed upon the real estate developer for the benefit of the property buyer?

To answer this question, we will rely on well-known research methodologies in the field of legal sciences, particularly the analytical approach, which is required for interpreting and analyzing the various legal texts that regulate this topic. We will also employ the descriptive method, as it is most suitable for addressing this subject. Consequently, we will divide this paper into the following sections:

Section One: Conditions for the Decennial Liability of the Real Estate Developer

Section Two: The Personal Scope of the Decennial Liability

Section Three: The Consequences of the Decennial Liability

Section One: Conditions for the Application of Decennial Liability for Real Estate Developers

The application of decennial liability for real estate developers requires the fulfillment of several conditions, which give it a unique character. These conditions are not found in civil liability. They are as follows:

1. Conditions Related to the Subject of the Guarantee:

The decennial liability for the real estate developer does not cover the entire property or all defects and damages. It is limited to the building's non-detachable equipment, meaning those elements that cannot be separated from the structure without being damaged. Referring to Article 181, Paragraph 5 of Ordinance No. 95-07, dated January 25, 1995, concerning insurance⁴

The law stipulates that the decennial guarantee covers damages affecting the structural integrity of specific elements of a building's equipment, provided these elements are an integral part of the construction, including the foundation, framework, enclosures, and coverings. These elements are considered inseparable when they cannot be removed, dismantled, or replaced without damage or removing any material from the construction.

While construction works may involve numerous defects, not every damage leads to the activation of decennial liability. A true defect or fault must exist. The damage affecting the equipment elements does not necessarily have to impact the safety of the entire building. It is sufficient for the damage to affect the element itself.

Although typically, damage to equipment elements may not compromise the overall safety of the building or the architectural work, it does affect its proper use and the fulfillment of its intended purpose⁵. Thus, the damage to the equipment elements must be of a severity that affects the overall use of the building, in addition to compromising the functionality of the element itself. It is important to note that the severity of the damage is a factual matter, subject to the discretion of the trial judge, considering the circumstances of each case. This means that minor or less significant damage does not fall under serious damage and is therefore governed by the general rules of liability⁶.

It is noteworthy that Article 181 of Ordinance No. 95-07, as amended and supplemented, requires the occurrence of damage, not a defect. Therefore, the buyer is only obligated to prove the occurrence of damage, without needing to demonstrate the defect specified in Article 554 of the Civil Code. According to the previous article, damage is considered serious and triggers decennial liability when the building is partially or entirely destroyed, or if it is affected by a defect that threatens its stability or safety.

Hence, the following conditions must be met regarding the subject of the guarantee⁷:

- There must be the presence of equipment elements.
- The equipment elements must be inseparable from the building without damage.
- The equipment elements must be part of the permanent structures of the building.
- The equipment element must be damaged in a significant and impactful way.

2. Regarding the Contract for Decennial Liability:

For the decennial liability of the real estate developer to apply, and for the beneficiary (the buyer) to claim the guarantee, a contractual relationship must exist between the real estate developer and the other participants through a construction contract. Furthermore, the legislator has expanded the scope of decennial liability. It no longer applies solely to construction contracts; it now extends to sale contracts executed by the real estate developer under Law No. 11-04, which governs real estate development activity.

A. Existence of a Construction Contract:

For the decennial liability to apply to the damage affecting inseparable equipment elements of the building, there must be a construction contract. This contract represents a prior contractual relationship between the real estate developer, as the project owner, and the design offices, contractors, and other involved parties. This relationship is established for the benefit of the buyer, i.e., the purchaser⁸

Law No. 11/04, as previously mentioned, includes provisions regarding this relationship. It obligates any natural or legal person undertaking a real estate project intended for sale or rental to engage the services of a legally qualified contractor, depending on the scale of the project⁹.

The relationship between the two parties is established through a construction contract, which is concluded after obtaining the necessary urban planning permits. It is important to note that a construction contract is an agreement whereby one party undertakes to provide a service or deliver a product in exchange for payment, as agreed by the other party¹⁰

B. The Existence of a Real Estate Sale Contract Concluded by the Real Estate Developer, Based on Article 25 of Law No. 11/04:

The decennial guarantee does not apply only to the construction contract. It also extends to the sales agreements concluded by the real estate developer. According to Law No. 11/04, there are three types of contracts covered: the sale based on plans as outlined in Article 28, the sale of a completed property as specified in Article 26, and the contract for the preservation of rights outlined in Article 27. Therefore, if the real estate developer (the seller) in the real estate development activity enters into any of these sales agreements, they are bound by the decennial guarantee alongside the contractor and the architect for the benefit of the buyer.

3. The Duration Condition :

According to Article 554 of the Civil Code, the guarantee period is 10 years from the date of the final delivery of the work. While this guarantee deviates from the general rules of the construction contract, which ends upon the completion of the delivery without reservations, the decennial guarantee is an exception to this rule¹¹

The 10-year period applies to the real estate developer in accordance with the provisions of Law No. 11-04, particularly Article 26, Paragraph 3, which establishes the decennial liability of the developer, regardless of possession or the certificate of conformity, thus not exempting them from this liability.

If this period expires without any serious damage occurring to the building's equipment elements, the beneficiary loses the right to file a decennial guarantee claim. This applies whether the beneficiary is the buyer in a real estate sale contract with the developer, or the employer, who is the project owner in a construction contract. The burden of proving damage to the building's equipment elements throughout the guarantee period rests with the claimant. This period serves as a test for the building's durability, safety, and the proper completion of the work, which the law guarantees to every building owner. Therefore, the beneficiary's right to the guarantee is only extinguished by the passage of this period.

A question arises in this context: Does the decennial guarantee period relate to public policy?

Article 556 of the Civil Code stipulates: "Any clause intended to exempt the architect or contractor from

the guarantee or limit it shall be void." Article 45 of Law No. 11/04 also states: "Any provision in a contract that aims to exclude or limit the responsibility or guarantees provided by this law, or those outlined in applicable legislation and regulations, or to restrict their scope—whether by excluding or limiting the solidarity of secondary contractors with the real estate developer—shall be considered void and unwritten."

From these two provisions, it can be inferred that the legislator has made the decennial guarantee period a matter of public policy¹²

Additionally, the guarantee as a whole cannot be waived, nor can its provisions be reduced or limited by shortening the duration or restricting liability to certain parties. However, it is permissible to agree on enhancing the guarantee by extending its duration or expanding its scope, either materially or personally, as long as this does not conflict with the goal of protecting the beneficiaries of the guarantee.

It is also important to note that the legislator has made a distinction between the decennial guarantee period, which is set at 10 years, and the statute of limitations for filing a decennial liability claim, as specified in Article 557 of the Civil Code. The latter is set at 3 years and begins from the date the damage occurs.

As for the duration of the decennial guarantee, this period begins when the work is finally accepted. Final acceptance refers to the situation where the completed real estate project is fully handed over, without reservations, and is under the possession of the real estate developer.¹³

A question arises: Does the 10-year period begin from the date the final work is delivered by the contractor to the real estate developer, or from the date the developer delivers the property to the buyer?

The guarantee provisions outlined in Law No. 11/04 (as mentioned above) do not refer to the general rules. Moreover, if the period were to start from the contractor's delivery of the project to the real estate developer, this could potentially infringe on the buyer's rights. For instance, the buyer might receive the property from the developer at a later time—perhaps 3 years after the developer has received it. Therefore, to properly calculate the full 10-year period, it should begin from the date the real estate developer delivers the property to the buyer. This should be based on a formal record prepared in the presence of a notary to confirm the buyer's actual possession of the property, and to document the handover of the building to the buyer.¹⁴

Axis Two: The Personal Scope of the Ten-Year Liability

The personal scope of the ten-year liability refers to its limits and the individuals to whom it applies, whether they are debtors or creditors.

1/ The Debtor of the Ten-Year Liability:

The application of the ten-year liability is not limited to the individuals specified in Article 554 of the Civil Code. It has been extended under Article 46 of Law 11/04 to include several other individuals. The article states:

"The ten-year liability is borne by the offices of studies, contractors, and other intervening parties who have a contractual relationship with the project owner, in the case of the total or partial collapse of the building due to construction defects, including the poor quality of the foundation ground."

From this text, it is clear that the real estate developer is jointly liable with the architect, contractor, and other individuals involved in the construction process. However, it is common for the contractor to subcontract part of the work to another contractor. Does this mean that subcontractors are jointly liable with the real estate developer in favor of the property buyer?

Article 554 of the Civil Code, in its final paragraph, explicitly excludes the application of the ten-year liability to subcontractors. However, Article 30 of Executive Decree 12/85, dated February 20, 2012, which contains the model specifications document outlining the obligations and professional

responsibilities of the real estate developer, states:

"The real estate developer is, for a period of ten (10) years, jointly liable with the offices of studies, contractors, partners, subcontractors, and any other intervening party, in the case of the complete or partial collapse of the building due to construction defects, including the poor quality of the foundation ground."

This text clearly shows that the legislator has expanded the scope of individuals liable under the ten-year guarantee. Responsibility is no longer limited to the real estate developer alone. Now, the real estate developer is jointly liable with subcontractors in the case of the total or partial collapse of the building¹⁵.

It is stated that: "The real estate developer shall, for a period of ten (10) years, bear joint liability with the study offices, contractors, partners, subcontractors, and any other intervening parties in the event that the building collapses, either in whole or in part, due to defects in construction, including poor soil quality."

From this text, it is clear that the legislator has broadened the scope of those held accountable under the decennial warranty. The responsibility is no longer limited to the real estate developer alone. Now, the developer is held jointly liable along with the subcontractors in the event of total or partial collapse of the building.¹⁶

2/ The Creditor of the Decennial Warranty: This is the beneficiary of the decennial warranty, which is the purchaser of the property. This warranty is specifically allocated in his favor by the force of law. The purchaser also benefits from it as a specific successor to the seller. This warranty is primarily tied to ownership rather than the property itself, as stated in Article 49/3 of Law 11/04, which stipulates: "This guarantee benefits successive owners of the building." Therefore, the purchaser of the property benefits from the decennial warranty in his capacity as the owner of the property. He may seek recourse against the real estate developer alone or in solidarity with other involved parties. In contrast, the tenant, the possessor, and the holder of a usufruct do not benefit from this warranty because they do not have a proprietary right over the property.

In addition to the property purchaser, the right to the decennial warranty is transferred to his general successor in the event of his death¹⁷

This refers to the heirs and the legatees, based on Article 108 of the Civil Code. This principle was reaffirmed by the legislator in Article 178, paragraph 1, of Order 95/07 concerning insurance, which states: "The project owner and/or its successive owners benefit from this guarantee until the expiration of the guarantee period." This aligns with the approach found in Article 49/2 of Law 11-04. The ten-year guarantee also extends to the private heirs of the property buyer in a sale based on design¹⁸.

However, this raises an important point. In the case of successive sales of the same property, alongside the real estate developer as the original seller, each successive buyer may become a seller to the next buyer. Who, then, should the final buyer direct their claim against? French law does not allow these successive owners to file their claims except against the original seller, the seller of the property prior to completion. As for the possibility of them filing a claim for the ten-year guarantee against their specific seller, this issue remains unresolved by both law and French jurisprudence¹⁹.

The right to the ten-year guarantee is also established for co-owners of the building, provided that the ownership condition set out in Article 178 of Order 95/07 concerning insurance is met, as well as Article 49/3 of Law 11/04. The law does not require the ownership to be individual or collective.

Section Three: Consequences of the Ten-Year Liability

The establishment of the ten-year liability for the real estate developer and other involved parties results in the beneficiary's right to invoke the guarantee by filing a claim for ten-year liability. Typically, the buyer prefers to hold the real estate developer, as the seller of the property, responsible for the guarantee, provided the developer is financially capable. As for the other parties involved, it may be difficult for the buyer to identify or pursue them. This highlights the importance of the construction contract with the real estate developer, as it enables the buyer to identify the responsible parties and, consequently, easily

pursue claims against them, especially if the real estate developer is insolvent. In such cases, the buyer can file a claim against the other responsible parties, such as the contractor, jointly, within three years from the date the damage occurred. If this period expires, the right to file the claim is lost²⁰

This means that the decennial liability claim is barred after three (3) years from the occurrence of the damage or the discovery of the defect. This is the period for filing the lawsuit; it is a statute of limitations, not a forfeiture²¹.

For instance, the statute of limitations can be interrupted by a judicial claim through an action on the merits. The beneficiary of the decennial warranty cannot invoke the 3-year period if it is proven that the damage was caused by fraud on their part. Once the decennial warranty period expires, the defendants are released from any further liability under the decennial warranty.

The decennial liability or decennial warranty is a legal guarantee based on the presumption of responsibility, without the need to prove the fault of the responsible party who caused the damage. It is sufficient for the damage to occur in the subject matter of the warranty for the decennial liability to arise. This responsibility extends to all those who contributed to the construction process. It is a form of liability based on the failure to achieve a specific result and is only dismissed by proving an external cause²².

The ten-year liability is based on the breach of a contractual obligation arising from the property sale contract concluded by the developer with the buyer within the framework of real estate development activities. In addition to the construction contract, under which the involved parties remain liable for ten years for damages to non-detachable elements of the building, which are considered to be serious damages, including total or partial collapse. This liability is presumed by law and is joint and several, related to public order, with the legislator's intention to ensure the safety of the building owner and the public interest.

As a result of the activation of the ten-year liability, the buyer is entitled to compensation. This compensation can take the following forms:

1/ Specific Performance:

This is the default remedy, provided it is possible and accepted by the creditor (the buyer). In such cases, the judge is obliged to rule in favor of specific performance. If the debtor proceeds with specific performance under the ten-year guarantee, they must repair all damages affecting the building's elements. However, if the debtor refuses to perform specifically, the buyer may resort to the courts to obtain authorization to appoint another developer or contractor to carry out the repairs at the original developer's expense²³

2/ Performance for Consideration:

Compensation is usually monetary and applies in the case of impossibility of specific performance. It is only due after a formal notice has been given to the party liable for the guarantee.²⁴

Monetary compensation, if not specified by law or contract, is determined by the judge. It covers both the loss suffered by the creditor and the gain that has been missed. The compensation does not only address the damages already incurred but also extends to future damages, as long as they are likely to occur in the future. However, compensation cannot be requested for damages that are merely a possibility.

The appropriate compensation for damages is assessed by the judge at the time of the ruling. The judge takes into account not only the damages and defects that appeared on the building before or during the lawsuit but also any developments occurring at the time of the ruling, based on the expert's report²⁵

Conclusion:

Through this research paper, we conclude that:

- The relationship between the real estate developer and other participants in the construction process does not end with the fulfillment of contractual obligations and

the final handover of the real estate project. Rather, this relationship extends beyond these stages, with the real estate developer remaining jointly liable for a period of ten years alongside these participants. This responsibility is toward the buyer of the property and their legal heirs, both private and public, for any damage to the construction, whether it involves total or partial destruction.

- The legislator in the Civil Code limited the joint decennial liability to the architect and the contractor only, explicitly excluding the liability of the subcontractor. However, the legislator addressed this gap through special provisions, expanding the list of responsible parties to include design offices, contractors, partners, technical supervisors, and any participant in the construction process. The responsibility of subcontractors was explicitly included.
- Ordinance 95-07 expanded the scope of the decennial responsibility by including damages that affect the structural integrity of non-detachable building components. It categorized such damages as serious harm that necessitates decennial liability. It is important to note that the decennial guarantee related to these elements does not apply to all architectural works, but is specifically limited to buildings, excluding fixed installations.

Based on this, we propose the following:

- Expanding the scope of decennial liability to include the producer, importer, and distributor of the materials used in construction, in order to protect the rights of the property buyer. This is because a large part of the construction process depends on ready-made or semi-made products that are directly installed in the building.
- Extending the duration of decennial liability. With the advancement of scientific and industrial developments that have directly impacted the construction process, the current duration is no longer sufficient to test the durability and safety of buildings.
- Defining the starting point for the duration of decennial liability in the specific provisions.

¹ Official Gazette of the Algerian Republic, Issue No. 10, dated March 5, 1986.

² Official Gazette of the Algerian Republic, Issue No. 14, dated March 3, 1993.

³ Official Gazette of the Algerian Republic, Issue No. 14, dated March 6, 2011.

⁴ Official Gazette of the Algerian Republic, Issue No. 13, dated March 8, 1995.

⁵ Mohammed Hussein Yassin Mansour, Architectural Liability, Dar Al-Fikr Al-Jami'i, Alexandria, 2006, p. 23.

⁶ Jamilah Faseeh, Decennial Liability Insurance in Construction, Journal of Urban Planning and Construction Legislation, Issue 5, March 2018, University of Tiaret, Ibn Khaldun, p. 139

⁷ Ayyashi Chabane, The Scope of the Decennial Guarantee for Engineers and Contractors, Journal of Humanities, Issue 50, December 2018, University of Constantine, p. 11 and following.

⁸ Same reference, p. 9

⁹ Article 16 of Law No. 11/04, as referred to above

¹⁰ Article 549 of the Civil Code

¹¹ Ibrahim Youssef, Decennial Liability for Architects and Contractors, in Accordance with Article 554 of the Algerian Civil Code, Legal and Political Science Journal, Issue 3, 1995, University of Algiers, p. 675.

¹² See also: Aida Mustafaooui, Decennial Guarantees and Special Guarantees, Policy and Law Review Journal, Issue 6, January 2012, University of Kasdi Merbah, Ouargla, p. 272.

¹³ Article 554, Paragraph 2 of the Civil Code

¹⁴ Article 34 of Law 11/04

¹⁵ Official Gazette of the Algerian Republic, Issue 11, dated February 26, 2012

¹⁶ Mohamed Said Fares, "The Personal Scope of the Obligation under the Decennial Warranty: Between Traditional and Contemporary Concepts," The Legal Journal, Issue 4, Volume 12, Cairo University, 2022, p. 919 and onward.

¹⁷ Ahmad Hussein Khalifat, The Liability of the Subcontractor for the Ten-Year Guarantee in the Jordanian Civil Code, Issue 3, October 2020, p. 128

¹⁸ Same source, p. 129

¹⁹ Article 261/9 of the French Building and Housing Law

²⁰ Article 557 of the Civil Code

²¹ Aymen Tamam, Abdel Ali Haja, "Decennial Liability as a Legal Mechanism for Protecting Real Property Ownership under Law 11/04," Journal of Rights and Freedoms, Issue 1, Mohamed Khider University of Biskra, 2013, p. 534.

²² Same Reference, p. 535

²³ Articles 196 and 170 of the Civil Code

²⁴ Article 176 of the Civil Code

²⁵ Tawfiq Zidani, "The Legal Organization of the Contract of Construction in Light of the Provisions of the Algerian Civil Code," Master's Thesis, University of Haj Kheddar, Batna, 2009-2010, p. 153