

Assessment of Dubai Real Estate Trust Accounts Law and Issues of Business: Evidence from Ontario and Utah

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The Dubai real estate trust accounts law is intended to reduce the buyers' uncertainty when their installment payments are paid in line with construction progress. Dubai is one of the Emirates of UAE. The analysis and findings suggests that the trust accounts law and producing certificate of construction progress tempt developers to delay the completion of the project and thereby buyers face a new level of uncertainty. The paper concludes that for restoring the efficiency of the trust account, the Dubai regulatory agency should either embed time scheduling in construction progress or release funds to developers by adopting the process and regulations of the Canadian Province of Ontario or the state of Utah in the USA.

Keywords: Real Estate Trust Accounts; Off-Plan Sales; Completion Time; Construction Progress; Breach of Contract

JEL Classification: K11, K12, K20, K42, R21, R28, R31, R38, L78

I. Introduction

The role of the real estate industry in the economy is growing with the increasing population and increased demand for residential and commercial units. The growth of the real estate industry has induced most countries to establish real estate regulatory bodies (commissions or agencies), to develop regulations and policies to protect the interests of industry participants. Real estate regulations deal with full-service real estate activities including property land use, real estate brokers, real estate lending, property rights and interests, developers (builders), buyers, and sellers' rights, landlord and tenant rights, ownership of jointly owned properties, and foreclosures.

A regulation is a specific set of guidelines which usually emerges from market conditions for governing the operations of business activities. Furthermore, it is a legislative act, which becomes enforceable as law. Organizations such as regulatory commissions or regulatory agencies which enforce the real estate regulations are usually independent and non-governmental bodies. For example, in Canada each province has legislation that regulates real estate activities by provincial real estate councils such as (the Real Estate Council of Alberta). In the United States, real estate commissions such as (the Florida Real Estate Commission) are responsible to regulate the state's real estate activities. In Australia, the REBA (Real Estate Business Agency Supervisory Board) regulates each state's real estate industry. In Dubai one of emirates (state) of the United

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Arab Emirates, the Real Estate Regulatory Agency, RERA (Official Dubai Real Estate Community) has full legal authority to regulate all real estate activities.

The existing literature focuses on the performance of regulatory bodies and an examination of special legal and business issues of regulations and their impact on the real estate industry and other economic sectors. For example, (Woodall and Brobeck, 2006) reviewed the performance of state's real estate commissions, which regulates brokerage services in the USA. Their paper presents the adverse impact of influence of real estate brokers on the decisions of regulatory bodies which led to restrict competition and consumer choice. The study concluded that the real estate brokers should be banned from serving in any regulatory capacity.

According to (Zhang, 2008) in China the supply of urban land is regulated, and the relationship of urban real estate market and macro-economic conditions is adjusted through the supply of land. This study uses an econometric approach to examine the impact of land supply on the real estate market. The author found that after more than ten years of urban land reforms, a real estate market price increase caused more land to be supplied in the short term, but the increase of land supply caused real estate prices to decrease over the long term.

In South Korea, fast-rising housing prices and a shortage of housing as a consequence of rapid growth of GDP and income became a serious social concern in the 1990's. (Kim, 1993) evaluates major real estate policies and finds that various regulations in housing and land markets made the supply response very inelastic and stimulated demand. The author recommended that since strong demand for land and housing is driven by lower taxation of income from real estate, the real estate tax regulations should be reformed, along with land supply policy.

(Mayer and Somerville, 2000) used quarterly data from 44 US metropolitan areas from 1985 and 1996 to determine the impact of land regulations on residential construction starts and the length of the development process. The authors concluded that the length of the development process varies by type of regulations, and new construction starts and price elasticity has an inverse relationship with extensive land regulations. Metropolitan areas with more extensive regulations have up to 45 percent less construction starts, and price elasticity in those areas is 20 percent lower than less regulated areas.

The existing literature, to the best knowledge of the author, does not address, directly or indirectly, the issue of the trust accounts law and off-plan sales with respect to market conditions of any country. Off-plan sales refer to the sales of a property before the structure is actually built. The purpose of this study is to overcome this shortcoming by focusing on the issue of off-plan sales and real estate trust accounts law and producing certificate of construction progress in Dubai.

Specifically, the objective of this study is to investigate whether the implementation of the trust accounts law has eliminated buyers' uncertainty when the installment payments are paid in line with construction progress. In this paper the author found that the efficiency of the trust account could be resorted if the Dubai regulatory agency or land department either embed time scheduling in producing certificate of construction progress or similar to the regulations of the province of Ontario in Canada or the state of Utah in the USA, the entire purchasers' payment is released to developers after completion of the project, and registering the units in the buyers' names.

The second section of this paper presents the demographics and economy of the United Arab Emirates. The third section briefly describes the real estate market in Dubai and the causes of crash in 2008. In the fourth section, the trust accounts law with respect to off-plan sales along

with the reasons that led to the implementation of the law will be presented. The fifth section is devoted to a real case analysis and issues of business related to operation of trust accounts law. In the sixth section, the major real estate regulations including trust accounts law in Dubai are compared to real estate regulations in Ontario and Utah. The seventh section covers the conclusions and policy recommendations.

II. United Arab Emirates Profile

The United Arab Emirates (UAE) became independent from The United Kingdom (UK) and formed a federation of seven emirates (states) in 1971. The seven states situated on the Persian Gulf are Abu Dhabi, Dubai, Sharjah, Ajman, Umm al-Quwain, Ras al-Khaimah and Fujairah (A Country Study: United Arab Emirates). The capital of the UAE is Abu Dhabi (the second largest city) and the business hub is Dubai (the largest city with the largest population).

In 2009, the UAE population was approximately 4.9 million in the top ten countries for highest growth rate (Country Comparison: Population Growth Rate) due to net migration. About 80 percent of the population is non-UAE nationals (IMF, World Economic Outlook, 2009). The distribution of population by emirates (states) is Dubai at 33.4 percent, Abu Dhabi at 32.7 percent, Sharjah at 19.9 percent, and other emirates 14 per cent (IMF, Country Report No. 09/120).

The UAE has an open economy with significant annual trade surplus (see Table 1). The UAE Ministry of Economy and Central Bank reported that about 95 percent of UAE's GDP resulted from three emirates of Abu Dhabi (54.8 percent), Dubai (31 percent), and Sharja (9.3 percent). (IMF, Country Report No. 09/120).

Table 1: UAE Economic and Demographic Data

Economic and Demographic	Year 2009
Land Area (1,000 sq Km)	84
Population (million inhabitants)	4.62
Population Density (inhabitants per sq Km)	55
Labour Force (million)	3.1
GDP at Purchasing Power Parity (billion \$)	186.8
GDP at Current Prices (billion \$)	286.0
GDP per Capita (\$)	49,782
Value of Exports (billion \$)	174.7
Value of Imports (billion \$)	144.5
External Debt (billion \$)	128.6
Public Debt over GDP (%)	54
Inflation Rate (%)	1.5
Currency (1 USD = 3.67 Dirham)	Emirates Dirham

Source: IMF, OPEC, and World Fact Book

III. Dubai Real Estate Market

Before the real estate market crash in late 2008, the largest contributor to Dubai's economy was real estate and construction accounting for 22.6 percent of Dubai's GDP (Wikipedia: Dubai). The above contribution emerged from many economic and demographic factors including strong liquidity, new migrants, population growth, housing shortages, real estate price expectation and inexpensive credit available to investors. These factors caused Dubai's real estate market to change to a speculative market with a major surge in real estate prices and inflation.

In late 2008, Dubai's property market experienced a major deterioration as a result of numerous domestic and external economic factors, including the US recession, which was triggered by a credit crisis resulting from the bursting of the housing bubble. The housing bubble resulted from low mortgage rates, low short-term interest rates, relaxed standard conditions for mortgage loans, and consumer irrational excitement behavior due to expected price changes (Holt, 2009). The bursting housing bubble and financial crises triggered by a liquidity shortfall in the United States banking system along with collapse of large financial institutions and downturns in stock markets created a global financial crises and worldwide economic downturn (Wikipedia: Financial Crisis of 2007–2010).

The global financial crisis accordingly hit demand for real estate in Dubai; consequently, the value of some properties reduced up to 64 percent (Wikipedia: Dubai) and more than \$75 billion (USD) in construction projects were either cancelled or suspended (PropertyCommunity.com). These factors caused the growth rate of construction activities to decline from 14.35 percent in 2007 to almost zero in 2008 (United Nations Statistics Division), and the inflation rate declined from 12.3 percent in 2008 to 2.5 percent in 2009 (IMF- World Economic Outlook ,2009).

Following the financial and real estate crises, most countries either introduced a series of new regulatory proposals or expanded the existing regulations to protect consumers from abusive financial services to restore the stability of real estate market.

IV. Real Estate Trust Accounts Law

Prior to the introduction of trust accounts law in Dubai, there was considerable frustration among property buyers who paid their installment payments to developers but were faced with late project starts or no evidence of physical construction progress. Furthermore, most property investors (buyers) had no guarantee that their installment payments had been used or would be used toward the construction of their property.

In Dubai, Real Estate Regulatory Agency, RERA (Official Dubai Real Estate Community) has full legal authority to regulate all real estate activities. RERA enforced establishing trust accounts (Dubai Law No. 8) for sales of all off-plan units on 6 May 2007 (Government of Dubai, Law No. 8 of 2007, 2009). Off-plan sales refer to the purchase of a property before the structure is actually built.

For the purpose of developing the trust accounts, a new department was established by RERA to oversee the collection of payments to developers who are tied to construction progress. The intent of establishing trust accounts is to better regulate the activities of developers. Furthermore, the trust account is expected to protect investors from developers who sold units on an off-plan basis in the absence of a monitoring system to control the allocation of buyers' funds toward construction of their property. After implementation of the trust accounts law, the buyers' installment payments are paid in line with construction progress and funds are deposited into the

trust account. The bank institutions (escrow account agents) manage the trust accounts and the agents should have approval and a certificate from the Dubai Land Department.

The Land Department organizes and documents all real estate transactions for and on behalf of the Dubai government and in the context of the trust account sets the terms for managing the account and the rights and obligations of the contracting parties. The trust account agents are permitted to release the account funds to developers if Dubai Land Department certifies the progress and construction completion phase. In this manner, the Dubai Law No. 8 puts financial activities of developers under government control.

Law No. (8) Of 2007 - Trust Accounts

Article (6): A Developer wishing to sell off - plan units must apply to the Department to open a trust accounts.

Article (7): The trust accounts shall be created under a written agreement between the Developer and the Account Trustee through which sums paid by buyers of units off the plan or paid by financing parties shall be deposited in a special account to be opened in the name of the real estate project with the Account Trustee. The said agreement shall set out the terms for managing the account, the rights and obligations of the contracting parties and a copy of this Agreement shall be lodged with the Department.

Article (10): The Department shall prepare a special register named "Register of Account Trustees" to register the names of the Account Trustees. The Account Trustee is required to be qualified to manage the Guarantee Account. The agreement between the Department and the trustee shall set out the duties of the trustee and the terms under which the trust accounts are managed.

It should be noted that in the speculative real estate market, which is populated with numerous of buyers, the ownership of the property may change several times (property flipping) before the units are ready for delivery. The government of Dubai passed Law No.13 in August 2008, and authorized RERA to regulate the interim register off-plan property sales (Government of Dubai, Law No.13 of 2008, 2009). The interim real estate register is a progressive regulation; however, it is outside the scope of this study.

Law No. (13) – Interim Register

Article (3): The Interim Real Estate Register is used to record all disposals of Real Estate Units off plan. Any sale or other disposition that transfers or restricts title or any ancillary rights shall be void if not recorded on that Register.

In addition to development of trust account, and interim real estate register, the other major regulations which have been enforced by RERA includes land registration, determination of areas where non-locals acquire properties, relationship between landlord and tenants, owner-ship of jointly owned properties, real estate brokers' register, mortgages, and rentals (Government of Dubai, 2009).

V. Issue Analysis of Trust Accounts Law

The issue of Dubai real estate trust account law arises when regulations governing trust or escrow accounts help developers use the regulations as a shelter for escaping of their fiduciary responsibilities and thereby increase the uncertainty of investors.

In this section a real case is presented and the efficiency of trust account will be examined. The focus of the analysis is to find out if the concerned law could reduce the buyers' uncertainty. For this purpose, the impact of economic justification of completion time and equilibrium of price and completion date in conjunction to Dubai trust account will be analyzed.

A. Case Study

The case study represents an investor who purchased a property at \$429,589 in early 2008 and paid 30 percent of the purchase price as down payment.¹

Table 2: Buyer's Payments by Construction Progress

Construction Phase (1)	Installment Payments(IP)				% Construction Completion (6)
	% IP (2)	% Cumulative IP (3)	IP (US\$) (4)	Cumulative IP (US\$) (5)	
1st installment	30%	30%	128,877	128,877	0.0%
Comp. Raft	10%	40%	42,959	171,836	7.1%
Comp. 1st basement	5%	45%	21,479	193,315	14.3%
Comp. 2nd basement	5%	50%	21,479	214,795	21.4%
Comp. Ground Floor	10%	60%	42,959	257,753	28.6%
Comp. 1st Floor					35.7%
Comp. 2nd Floor	6%	66%	25,775	283,529	42.9%
Comp. 3rd Floor					50.0%
Comp. 4th Floor	6%	72%	25,775	309,304	57.1%
Comp. 5th Floor					64.3%
Comp. 6th Floor	6%	78%	25,775	335,079	71.4%
Comp. 7th Floor					78.6%
Comp. 8th Floor	6%	84%	25,775	360,855	85.7%
Comp. 9th Floor					92.9%
Comp. 10th Floor	6%	90%	25,775	386,630	100.0%
Completion Date	10%	100%	42,959	429,589	

Source: Case study

Table 2 reports buyers' payments and construction phases. The property is located in a high-rise building with 330 units. The developer according to the trust accounts law asked the buyer to pay the installment payments (IP) by construction phase as shown in columns 1 and 2 (Table 2). It should be noted that the same rule is applicable to other 329 investors where only their purchase price may differ. Furthermore, there are many other high-rise buildings in Dubai that they have the same conditions where only their locations and prices may differ.

Table 2, Column 3 reports percent of cumulative installment payments in line with construction progress. Columns 4 and 5 report the amount of installment payments in each construction phase and the amount of cumulative payments, respectively. The percent of

¹ In mid-2008, RERA enforced a new rule for banning developers from collecting more than 20 percent of the cost of a property before construction begins.

construction completion (reported in Column 6) is estimated from construction phase (Column 1) which was submitted by the developer. In the contract, the substantial completion date was stipulated as September 2010, and the buyer agreed that the substantial completion date may be extended on a 'no liability basis' by a period of up to 6 months.

Table 2 reveals that the developer is collecting about 60 percent of the purchase price (column 3) when less than 30 percent of construction (column 6) has been completed. Thus a delay in the project is expected when the super-structure (the part of a building above the foundation) costs are significantly higher than substructure (foundation) and developers receive most of their funds at completion of substructure.

The case study discloses that the developer before reaching the 30 percent construction completion phase (column 6) without the consent of investor had postponed the completion date three times. The stipulated September 2010 completion date in the contract changed to mid-2011, then to December 2011, and then to mid-2012. This is in fact one of the problems that can be observed in the Dubai real estate market today.

The behavior of the developer continuing to delay the project is expected when time scheduling, completion date, construction progress and trust accounts operate independently, and the developer is able to collect most of the purchase price before building the super structure. In the following sections, the impact of these factors in making the trust account inefficient and helping developers breach the contract will be described.

B. Economic Justification of Completion Time

In economic context the value of time which is related to the completion or delivery time is the amount of money that a person would be willing to pay in order to reduce the length of work, and thereby save time; or the amount he or she would accept as compensation for lost time. In fact, time is a very special resource in that one cannot either stop it or store it; when it is lost, it cannot be brought back.

The economic justification of paying more, for example, in air transportation versus rail is the amount of time that travellers will save through use of air transportation. In the airline industry, compensation may be payable where delays exceed three hours. Where the flight delay is at least five hours, the passengers who decide not to travel shall be offered reimbursement of the ticket's purchase price (CAR - Delay). In the same industry, the advanced ticket purchase is often induced by lower fares (longer time period and/or lower prices).

Thus, time is an invisible bridge between price and completion date or delivery date where these two variables are inversely interrelated. When an airline pays compensation due to delay, this payment can be interpreted as price adjustment because of increase in the length of journey. Similarly, in the postal system when a customer prefers regular mail versus express mail, the lower price of regular mail allows delivery time to increase. In public construction industry such as roads and bridges, contractors pay compensation for failure to complete a project or portion of a project on time. The amount of compensation due to increased period of construction is an indicator of price adjustment.

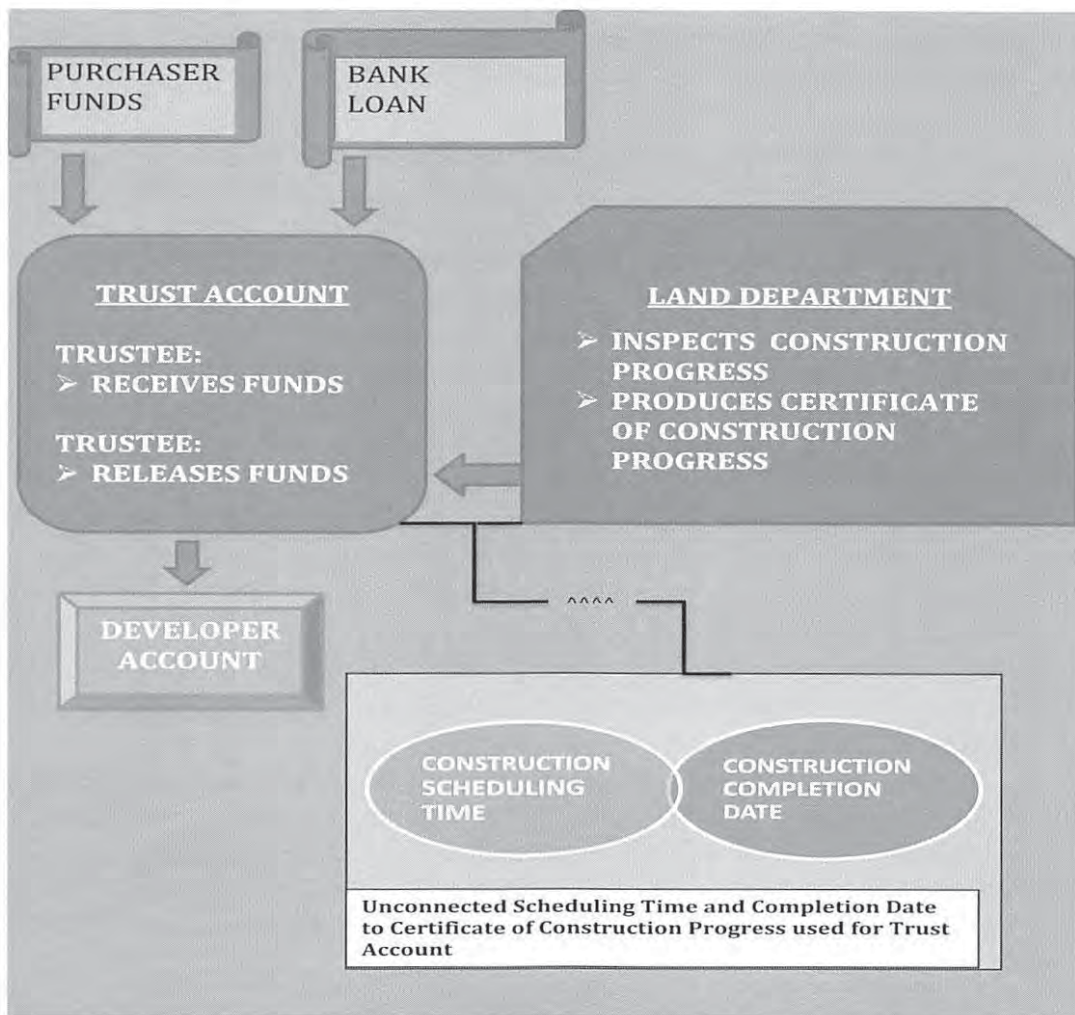
Unlike other economic sectors where the value of time is recognized, the Dubai regulatory agency is only concerned that the payments from the trust account to developers are in line with construction progress without considering the time scheduling of construction and if developers are able to meet the substantial completion date that stipulated in the contract. The substantial completion date is defined as the date on which the construction is completed, and the unit is

suitable for use although minor items left to be done. The extension time is applicable after the substantial completion date and usually does not exceed three to six months. The extension time protects the developer or builder against unforeseen events that cause delay.

Figure 1 depicts a schematic relationship of purchaser payments, bank loans, and certificate of construction progress in conjunction with Dubai real estate trust account. As described in Section 4, the trustee receives funds from purchasers and creditors (bank) and holds funds in the trust account. Following the new phase's construction completion, the Land Department inspects the site and produces certificate of construction progress. This certificate authorizes the trustee to pay developer the associated cost of construction progress.

The most important business issue that arises from this process is the certificate of construction progress. This certificate, which is used by trustee, does not say how long developers had delayed between phases and whether the developer is able to meet the stipulated completion date in the Sales Purchasing Agreement. In other words, the trust account is the best shelter for developers to continue or stop their work at any occasion they wish.

Figure 1: A Simplified Schematic Relationship of Trust Accounts Law and Construction Progress in Dubai



Practically, when the critical information of scheduling time and completion date is not taken into account, then the effectiveness of trust accounts law, which requires buyer to pay in line with construction progress, is disputable. For example, consider the real case study where the trust account and certificate of construction progress empowered developers to delay the project and thereby create business issues in disfavor of buyers. Furthermore, sometimes inefficiency of a regulation such as trust account and certificate of construction progress in Dubai can neutralize the impact of other regulations. For example, consider the following real estate regulation:

Law No. (8), Article 17

A developer shall be cancelled from the Register if he does not commence construction within six months of the date he was granted approval to sell off plan without acceptable excuse".

The impact of enforcing Article 17 can be neutralized when developers rather than cancelling the project commence construction with minor work and then postpone the project for an unknown period because scheduling time is unconnected to the certificate of construction progress. This behavior is mostly observable when developers sold part of their units before the market crash, but they were not successful in selling the unsold units after the crash. Developers, by delaying rather than cancelling the project, attempt to hold on to the buyer's payments as long as possible where such delay is considered as breach of contract.

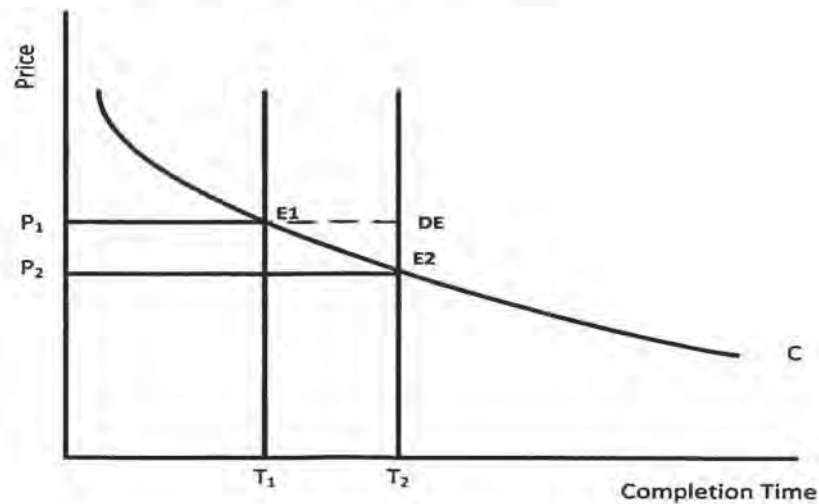
C. Distortion of Equilibrium and Breach of Contract

In residential and commercial real estate contracts, price and completion date (and other terms) are determined by the developer but require the joint developer and buyer consent on both price and completion date. Once the contract is signed, one party cannot change the terms without the consent of the other party. This implies that developers cannot change the contract terms, including completion date, without consent of the buyers. The logic is the intersection of agreed price (P1) and completion date (T1), which creates an original equilibrium and satisfactory point (E1) for both buyers and developers (Figure 2). If developers solely change the substantial completion date from (T1) to (T2) without adjusting the price (P1), the result is departing from the satisfactory equilibrium point (E1) to disequilibrium and dissatisfaction point (DE).

Theoretically, in order to achieve a new equilibrium point, buyers and developers have to move on curve C where the revised completion time (T2) intersects the price (P2) at the new equilibrium point (E2). The price (P2) is lower than (P1) due to compensation payments to buyer because of delay in completion date. The curve C shows the inverse relationship of property price and completion time (stipulated in the contract) while their linear or non-linear relationship may vary with type of markets.

Figure 2 shows that since price and completion date are key elements of the binding agreement when developers—due to absence of scheduling time in construction phases—unilaterally change the substantial completion date, the agreed equilibrium price and completion time will be distorted and cause fundamental breach of the contract. Under such conditions, the buyers have legally two options that either accept the additional extension time (T2 – T1) with adjusting price (P2) or nullify the agreement.

Figure 2: Theoretical Relationship of Purchasing Property Price and Completion Time



VI. Effectiveness of Trust Accounts Law

So far it has been shown that the Dubai real estate trust account law is not very efficient for reducing the uncertainty of buyers. This inefficiency results from the absence of time scheduling and completion date in producing the certificate of construction progress, which is used by the trustee.

In order to better understand how real estate regulations and trust accounts operate efficiently in other jurisdictions, the major real estate regulations in the province of Ontario² (Ontario Condominium Act) in Canada and in the state of Utah³ (Utah Division of Real Estate) in the USA were examined.

The province of Ontario has several large cities including the city of Toronto, which contains the second largest concentration of high-rise apartment buildings in North America. In this province all matters pertaining to real estate are subject to government regulations including protecting buyers against developers delay, bankruptcy, and breach of contract “Tarion Warranty Corporation” and defects in work and material “Ontario New Home Warranty Plan Act.”

The state of Utah has several large cities including Salt Lake City, West Valley City, Provo, West Jordan, and Orem. In this state all matters pertaining to real estate including escrow account (Trust Accounts, Rule R162-2f-403) and mishandling trust account (Securities Division – Section 403 Mishandling of Trust money) are regulated by the Utah Division of Real Estate. The mission of this division is to protect the public and promote responsible business practices through education, licensure, and regulation of real estate.

² In 2012, the population of Ontario was about 13 million and in the same year, GDP was more than 613 billion dollars (37.8 percent of Canada’s GDP).

³ In 2010, the population of Utah was 2.7 million and in the same year, GDP was \$114.5 billion (.78 percent of USA GDP).

Table 3 compares the major real estate regulations pertaining to trust accounts, releasing funds to developers, and construction performance bonding in the province of Ontario, the state of Utah and emirates of Dubai.

Table 3 reveals that in Ontario and Utah, the financial incentive for developer to complete the project on the stipulated date is the accumulated purchaser's funds (down payments and mortgages) held in the trust account and escrow account respectively. The accumulated funds results from regulation of trust account that do not allow the trustee to release funds to the developer before completion of the project and registration of the units in the names of buyers. This financial incentive encourages developers to finish the project as stipulated in the contract and to use the trust account funds for paying their construction loan to eliminate the cost of borrowing and their obligation to the creditors.

However, in Dubai the purchaser's payments and construction loan is deposit in one trust account, and the trustee releases 95 percent of the trust account funds to developer before the units register in the name of buyers. Therefore, in Dubai there is less financial incentive for a developer to meet the completion date as stipulated in the contract.

It is interesting to note that in state of Utah the sub-contractors have more protection for receiving their funds from developers because the designated escrow account agent releases the construction loan directly to sub-contractors and trades on the basis of construction progress and basis of invoices, which have been approved by developer.

Another financial factor is the construction security bond (Development of Construction Bond), which is mandatory for large construction projects in Canada and the USA. One of the construction bonds is the performance bond⁴, which is issued by an insurance company or a bank to guarantee that construction contractors will finish their contract as per terms and condition relating to time and price. If a contractor defaults, or is bankrupted, the other party (owner or developer) may call upon the surety to complete the construction or select a new contractor to deal directly with the owner or allow the owner to complete the work with the surety paying the costs. Under any circumstances, developers directly and investors indirectly are guaranteed compensation for any monetary loss up to the amount of the performance bond.

Table 3: Comparison of Major Real Estate Regulations in Ontario, Utah, and Dubai

Province of Ontario - Canada	State of Utah - USA	Emirates of Dubai - UAE
Developer after receiving down payment (usually 20 percent of purchase price is paid within one year after signing the contract), <u>will not solicit the balance of payment until the completion of the project.</u> The balance of the purchase price needs "bank pre-arranged mortgage confirmation".	Down payment is required but the amount and period of payment is negotiable. Most developers negotiate for 10 to 20 percent of purchase price. Developers <u>will not solicit the balance of payment until the completion of the project.</u> The balance is generally financed as a mortgage.	Before 2008 developers after signing the contract received the entire or major part of purchase price by installment payments regardless the status of the project. Since 2008, developers should not receive more than 20 percent of the purchase price as down payment. Developers <u>solicit the balance of payment by construction progress.</u>

⁴ The other bonds are: Bid Bonds: A bid bond guarantees that contractor will honor its bid if awarded the contract. Supply Bonds: The bond guarantees that subcontractors supplying the material in stated period as indicated in the contract. Payment Bonds: The bond guarantees the payment to subcontractors for the monies that they are due from the contractor.

**Table 3: Comparison of Major Real Estate Regulations in Ontario,
Utah, and Dubai: Continues**

Province of Ontario - Canada	State of Utah - USA	Emirates of Dubai - UAE
<p>Purchasers down payment and mortgage held in a trust account. <u>The trustee is not authorized to release</u> the trust account funds to developer before completion of the project and registering the units in the name of buyers.</p>	<p>The funds received from purchasers in the form of down payment and mortgages are held in an escrow account. <u>The escrow account agent is not authorized to release</u> the escrow funds to the developer before the completion of the project and registering the units in the name of buyers.</p>	<p>The funds received from the purchasers in the form of down payment and mortgage are held in a trust account. <u>The trustee is authorized to release 95 percent of the funds to the developer on the basis of construction progress.</u> The balance of 5 percent is released after registering the units in the name of buyers.</p>
<p>Developers for construction development negotiate with the financing institutions (creditors). A designated quantity surveyor on behalf of creditor monitors the construction expenditures and <u>releases the construction loan to the project account on the basis of construction progress and construction costs.</u></p>	<p>Developers for a construction loan negotiate with financing institutions (creditors). A designated escrow account agent monitors the construction expenditures and <u>releases the construction loan to sub-contractors and trades on the basis of construction progress and basis of invoices which have been approved by developer.</u></p>	<p>In the event a developer is obtaining a construction loan, the loan is held in <u>the same trust account that purchasers had deposited their funds to.</u> The trustee releases <u>both purchaser's funds and construction loan to developers on the basis of construction progress and construction costs.</u></p>
<p><u>The funds received from the purchaser are protected up to a certain dollar amount if sales are not completed due to bankruptcy of builder, developer's breach of contract, or terminating the purchasing contract.</u> Furthermore, the regulatory corporation, Tarion, offers warranty protections against the buyer's deposit, delayed closings, delayed occupancies, and defects in workmanship and materials.</p>	<p>The set up escrow account <u>protects the funds received from purchases due to delay of the project and/or breach of contract.</u> The warranty program protects buyers' against defects in workmanship and materials.</p>	<p><u>There is no regulation to protect the funds received from purchasers in the event projects are not completed due to bankruptcy of builder, delay by the developer's breach of contract.</u> The warranty program protects the buyers against defects in workmanship and materials.</p>
<p>In Canada (Ontario) the construction performance bond <u>is mandatory</u> for large construction projects.</p>	<p>In USA (State Utah) the construction performance bond <u>is mandatory</u> for large construction projects.</p>	<p>In Emirates of Dubai the construction performance bond <u>is not mandatory</u> for large construction projects.</p>

Source: Ontario Condominium Act, 1998 section 82 (1); Ontario New Home Warranty Plan; Tarion Warranty Corporation; Utah Division of Real Estate; Trust Accounts Rule R162-2f-403; Government of Dubai, Law No. 8 of 2007 (2009) Articles 9, 13, and 14.

VII. Conclusions and Policy Recommendations

Prior to the introduction of trust accounts law in Dubai, there was considerable uncertainty among property buyers who paid their installment payments to developers but had no guarantee that their payments had been used or would be used toward the construction of their property. This study attempted to find out if the trust accounts law could reduce the buyer's uncertainty. The study concludes that the law No. (8) concerning establishing the trust accounts law and linking buyers payments to milestones has, to some extent, removed frustration and uncertainty among off-plan buyers.

However, although in all economic sectors the value of time is recognized, Dubai Land Department, which set out the terms for managing the account and the rights and obligations of the contracting parties, by not linking time scheduling of construction to completion phases, has indirectly tempt developers to create artificial gaps between construction phases in their benefits and deliberately delaying the completion date of the project for an indefinite period. The case study reveals that the inefficiency of trust account law is so severe that developer at any stage of construction can use the trust account as shelter and, thereby, delay the completion of project in disfavor of buyers.

Furthermore, it was found that in Dubai there is less financial incentive for a developer to meet the completion date as stipulated in the contract since the trustee allows to releases 95 percent of the purchaser's payments to developer before the units are registered in the name of buyers. In other countries such as Canada and USA, the trustee releases the purchasers' funds to the developer after completion of the project and registering the units in the names of buyers.

When developers fail to meet the stipulated completion date, there is a breach of contract; and as a result, buyers face a new level of uncertainty. This issue currently dominates the real estate market in Dubai where numerous lawsuits against developers have been brought before the court of law. When a construction contract is not completed on time, developers transfer the risk of their bad planning and scheduling and their financial problems to investors (buyers). It is also recognized that the investors could suffer substantial monetary damages due to loss in rental value, interest on invested funds, and change the buyer's priorities and plans.

This paper reviewed the trust account in the Canadian province of Ontario and the state of Utah in the USA and recommended one of the following two solutions for removing deficiency or increasing efficiency of the trust accounts law in Dubai:

1. The value of time to be recognized and construction scheduling time with respect to the completion date of the project be linked to a certificate of construction progress, which is used by the trustee.
2. The Ontario and Utah trust account regulations be adopted for Dubai where the trustee releases the purchaser's funds to developer after completion of the project and registering the units in the name of buyers.

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