

Judgement of the Supreme Court (Civil Chamber), 20 January 2015

The Supreme Court has issued a ruling regarding the appeal for judicial review and concerning the infringement of procedural law, filed by the developer-seller, in which the interpretation of Article 3 of Law 57/1968, dated 27 July, concerning the receipt of advanced payments in the construction and sale of dwellings, is questioned, in relation to the possibility of buyers cancelling the contract when the delivery period has expired.

The appellant considered it necessary for the Supreme Court to expressly issue a judgement for cases in which dwellings are delivered with a slight delay, as well as confirm the interpretation of the difference between the aforementioned Article 3 of Law 57/1968 and Article 1124 of the Civil Code (termination of contract due to breach of reciprocal obligations), due to the existence of the contradictory case law of Provincial Courts.

It is worth adding that the criteria followed by the Supreme Court until the date of this ruling was that late compliance by the seller would not authorize the buyer to terminate the contract.

The facts giving rise to the appeal are as follows:

- In September 2007, the parties entered into a sale and purchase agreement for a dwelling under construction, whereby the seller undertook to deliver the dwelling in September 2009, and the same contract provided an explicit termination clause in the event that the buyer failed to make timely payments.
- In October 2009, when the dwelling had not been delivered, the buyers terminated the contract with the repayment of advanced amounts and interest.
- Notwithstanding the above, the construction works continued until December of that year, and such works were completed three months later than agreed.
- In January 2010, the first occupancy licence was obtained and the seller convened the buyers to a meeting before a notary to grant the public sale and purchase deed and, when the buyers failed to attend, the seller asked the notary to notify them that the contract had been terminated.
- The buyers filed a complaint for breach of contract that was dismissed by the local court, but later accepted by the Provincial Court of Madrid, which declared the contract terminated.

Initially, the Supreme Court dismissed the extraordinary appeal for procedural infringement, but did accept the judicial review request, in order to unify the doctrinal criteria. In this judgement the Supreme Court confirms the doctrine of the Provincial Court of Madrid, thereby recognising the buyers' right to terminate the contract in the event of late compliance by the seller.

In accordance with Article 3 of Law 57/1968, once the period for completing the works or delivering the dwelling has expired and neither have taken place, the buyer may choose between (i) terminating the contract and claiming repayment of the amounts paid on account, with an increment of six percent in annual interest, or (ii) granting the developer-seller an extension of said period.

The Supreme Court explains that this precept grants the contracts included in its scope of application a speciality whereby a delay in delivery, even when not particularly serious or significant, constitutes a breach that justifies contract termination and, in this context, it will be an essential obligation of the developer-seller to guarantee the repayment of the sums advanced by the buyer. Likewise, the Supreme Court states that said speciality in turn determines that the case law on which, in this case, the Provincial Court of Madrid is basing its argument, shall not be applicable (the Provincial Court having interpreted that the general rule in Article 1124 of the Civil Code states that when a dwelling is delivered with a slight delay the purpose of the transaction has not been undermined and, as a general rule, this does not empower the buyer to terminate the contract).

Finally, argument six of the judgement sets forth a number of reasons for equating the termination foreseen in Article 3 of Law 57/68 to contractual termination for breach by the seller, including the inherent right of the buyer as recognised in said precept to choose between terminating or extending the contract; or the contractual balance afforded by the said precept in contracts subject to this framework, as the seller's right to terminate the contract in the event of a single non-payment by the buyer is offset by the buyer's right to terminate the contract in the event of a delay in completion and delivery of the dwelling.

In conclusion, the Supreme Court has changed its criterion and confirms that "a delay in delivery, even when is not especially serious or significant, constitutes a breach of contract by the seller that justifies termination of the contract by the buyer". However, it does also clarify that said doctrine does not preclude termination of the contract being denied to the buyer when, in accordance with general principles, the latter acts in bad faith or abuses the seller's rights.