



TOPE ADEBAYO LP

REGULATING OFF-PLAN REAL ESTATE IN NIGERIA: COMPARATIVE INSIGHTS AND REFORM OPTIONS



INTRODUCTION

Off-plan property acquisitions have become an increasingly popular feature in Nigeria's real estate market. The commercial appeal is clear. Buyers commit to today's price for properties yet to be constructed, often paying a significant portion, or sometimes the entire purchase price, upfront, in anticipation of delivery of a completed asset that will have appreciated by completion. Developers, in turn, use off-plan sales as a means of raising construction capital directly from purchasers rather than relying solely on institutional financing.

For developers, the arrangement is equally compelling. Off-plan sales provide a mechanism for raising construction capital directly from buyers rather than from lenders, thereby monetising demand before construction begins. Despite these advantages, off-plan transactions carry significant legal and commercial risk.

The issue is not that Nigerian law is silent on real estate transactions, but that the framework governing off-plan arrangements is fragmented and insufficiently structured to address the specific risks inherent in paying for assets that do not yet exist. This creates significant exposure for buyers. Industry reports suggest that real estate fraud remains widespread, with substantial financial losses recorded in recent years, particularly in Lagos State.¹ Off-plan purchasers are especially vulnerable because they commit funds upfront without immediate control over the asset. As a result, they face heightened risks, including delays, title uncertainties, project abandonment, and, in some cases, outright fraud.

This article examines the legal position of off-plan buyers in Nigeria, identifies key structural vulnerabilities, and draws comparative lessons from jurisdictions that have developed more robust regulatory frameworks.

TITLE RISK AND BUYER EXPOSURE UNDER THE LAND USE ACT

Every off-plan transaction in Nigeria rests on a legal foundation shaped by the Land Use Act, 1978 ("the Act"). The Act vests all land in Nigeria in the state Governor, who holds it in trust for the use and benefit of citizens.² In practical terms, what individuals and entities hold is not absolute ownership, but a right of occupancy, commonly evidenced by a Certificate of Occupancy (C of O) or perfected through the Governor's Consent.³

Against this backdrop, off-plan transactions do not follow a uniform legal structure. In some cases, the parties execute a contract of sale of land at the outset, with title to be transferred upon completion. In other cases, a deed of assignment is executed before project completion, purporting to vest legal title in the buyer at that stage.

Where a deed of assignment has been duly executed and subsequently perfected by the registration of the deed, stamping of the deed, and receipt of the Governor's Consent, the buyer's position is materially

¹ See, HFRP, "New Hope for Nigerian Homebuyers: Federal Ministry of Housing and Urban Development Launches Initiative to Combat Real Estate Scams." (FMHUD, February 26, 2025) <https://reports.fmhud.gov.ng/blogs/new-hope-for-nigerian-homebuyers-federal-ministry-of-housing-and-urban-development-launches-initiative-to-combat-real-estate-scams>; Mercy, "Real Estate Scams in Nigeria Hit ₦16 Billion in 2025: How to Avoid Getting Duped" (Nigeria Real Estate Blog, August 6, 2025) <https://nigeria realestateblog.com/real-estate-scams-nigeria-2025/>; Modupeoreoluwa S., "LASRERA vs. Real Estate Scams in Lagos | LinkedIn" (August 3, 2025) <https://www.linkedin.com/pulse/lasrera-vs-real-estate-scams-lagos-modupeoreoluwa-sanwo-olu-4ggqf/>

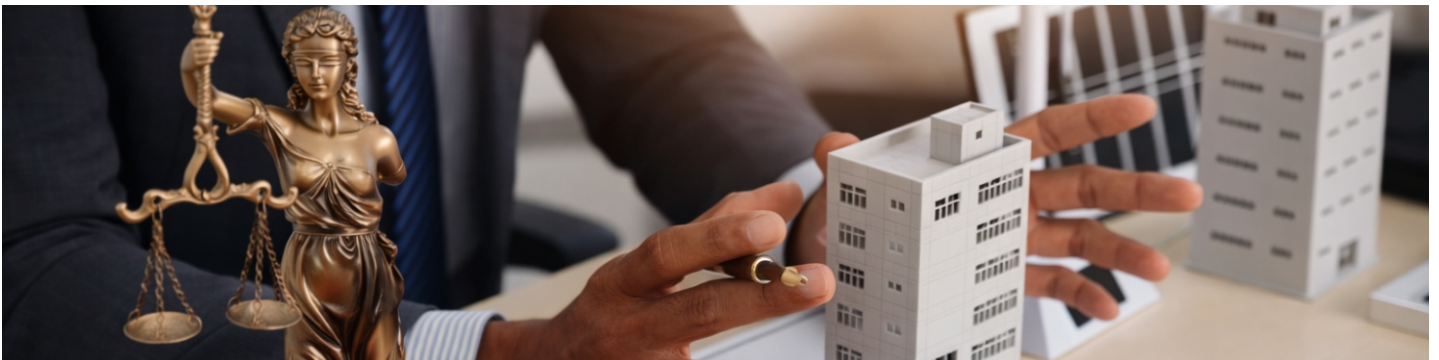
² Section 1, LUA 1978

³ Section 22, LUA

stronger than that of a party relying solely on contractual rights. The critical qualification, however, is that the title under the Act's regime is not perfected until these steps are completed, a process that is frequently delayed or, in some cases, never concluded.

The implications are significant. Until perfection, a purchaser holding only a contract of sale, or an unregistered deed of assignment, possesses an interest that is not fully enforceable against third parties and remains vulnerable to competing claims. Where no registrable instrument has been issued at all, the purchaser is, in substance, an unsecured creditor, with recourse limited to personal remedies such as specific performance, damages, or a refund, none of which constitutes a right enforceable in rem.⁴

This distinction between contractual rights and perfected title is fundamental. Yet, it is one that many buyers only fully appreciate when disputes arise.



THE CURRENT NIGERIAN FRAMEWORK

A rigorous examination of Nigeria's legal framework for off-plan transactions requires a clear understanding of both its strengths and its limitations. While certain protections exist, the framework remains incomplete, leaving significant gaps that expose buyers to risk.

Lagos State Real Estate Regulatory Authority (LASRERA)

Lagos State has taken the most structured approach to regulating off-plan transactions through the Lagos State Real Estate Regulatory Authority (LASRERA), established under the LASRERA Law 2022. Section 1 of the Law defines an “off-plan arrangement” as one where a real estate operator collects deposits from the public for property not yet developed or still under construction.

To improve accountability, the law requires all real estate operators, including developers, facility managers, and property management companies, to be registered before carrying on business in Lagos.⁵

For Individual developers or managers, registration requires:

- a. a Lagos State Residents Registration Agency (LASRRA) number,
- b. a CAC-registered business name,

⁴ A right enforceable in rem (Latin: "against the thing") is a right that attaches to the property itself, not to any particular person. It is enforceable against the whole world, meaning anyone who subsequently deals with that property is bound by it, regardless of whether they were a party to the original transaction.

⁵ Section 27, LASRERA Law 2022

- c. a separate client account,
- d. a minimum educational qualification of WASC, GCE or NECO, and
- e. a three-year tax clearance certificate.⁶

For companies, at least one director must meet these requirements.⁷

Operating without registration attracts statutory penalties, including fines of N250,000 for individuals and N1,000,000 for companies.

Beyond registration, LASRERA provides a complaints and mediation framework for resolving disputes. Since its establishment, the Authority has handled a significant number of fraud-related complaints and has facilitated recoveries for affected parties. Importantly, its mediation process offers a faster and more practical alternative to litigation, which can take several years to resolve in the courts.⁸

LASRERA has also strengthened enforcement efforts in recent years, including collaboration with law enforcement agencies to address fraudulent practices in the sector.⁹

Taken together, these measures position LASRERA as the most developed regulatory mechanism for off-plan transactions currently operating in Nigeria.

Limitations Outside Lagos

Despite these advancements, the protection offered by LASRERA is limited to Lagos State.

In other jurisdictions, including the Federal Capital Territory, Rivers State, and Ogun State, there is no equivalent unified regulatory framework governing off-plan transactions. While agencies such as the Federal Capital Development Authority (FCDA)¹⁰ and the Abuja Geographic Information Systems (AGIS)¹¹ oversee land administration in Abuja, they do not provide:

- mandatory developer registration
- off-plan specific regulatory oversight
- or structured dispute resolution mechanisms for buyers

As a result, outside Lagos, off-plan buyers must rely primarily on contractual protections, due diligence, and general legal remedies.

This uneven regulatory landscape means that the level of protection available to buyers depends significantly on location, leaving many participants in the Nigerian real estate market exposed to avoidable legal and financial risk.

⁶ Ibid; Section 26(2)

⁷ Section 26(3)

⁸ Ogundeji J, "LASG Recovers N773.6m, 38 Properties for Residents" (Punch Newspapers, May 27, 2025) <https://punchng.com/lasg-recovers-n773-6m-38-properties-for-residents/>

⁹ Balogun F, "LASRERA, EFCC Partner to Tackle Real Estate Fraud - Businessday NG" (Businessday NG, January 18, 2024) <https://businessday.ng/companies/article/lasrera-efcc-partner-to-tackle-real-estate-fraud/>

¹⁰ Federal Capital Development Authority

¹¹ Abuja Geographic Information System

COMPARATIVE REGULATORY ANALYSIS: LESSONS FROM DUBAI AND SOUTH AFRICA

Dubai and South Africa provide useful comparative benchmarks, but for different reasons.

Dubai represents a highly structured, investor-driven real estate market with significant reliance on off-plan sales and a significant international investor base.¹² Its regulatory framework emerged in response to widespread developer defaults during the 2008–2009 financial crisis. The reforms that followed were designed specifically to address the risks associated with off-plan transactions, particularly misuse of buyer funds and project non-completion.

South Africa, by contrast, offers a closer institutional and legal analogue to Nigeria. As an African jurisdiction with a mixed legal system influenced by English common law,¹³ and facing similar housing and urbanisation pressures, its regulatory interventions are more readily adaptable to the Nigerian context.¹⁴ While less comprehensive than Dubai's, it provides a more developed framework than Nigeria's, particularly in relation to construction standards and post-completion protections.

DUBAI: A PRE-COMPLETION PROTECTION MODEL

Dubai's off-plan regulatory framework rests on three interlocking laws: Law No. 8 of 2007 (Escrow Account Law), Law No. 9 of 2007 (Developer Capital Requirements), and Law No. 13 of 2008 (Interim Property Register). These laws are administered by the Dubai Land Department (DLD) and its regulatory arm, the Real Estate Regulatory Agency (RERA). Together, these laws address the core risks inherent in off-plan transactions, misuse of buyer funds, undercapitalised developers, and uncertainty of title.

Escrow Protection of Buyer Funds

Under Law No. 8 of 2007, no developer is permitted to sell off-plan units unless a project-specific escrow account has been opened with the approval of the regulator, Dubai Land Department.¹⁵ The escrow account is established pursuant to a written agreement between the developer and an escrow agent.¹⁶ The escrow agent is responsible for safeguarding buyer funds and ensuring strict compliance with the statutory regime.

The purpose of this requirement is clear:

- Buyer funds cannot be mixed with the developer's general accounts
- Funds are protected from claims by the developer's creditors
- Withdrawals are tied to verified construction progress, rather than the developer's discretion

An independent escrow agent manages the account and is responsible for ensuring compliance with the statutory framework. The agent also reports to the regulator, providing ongoing oversight.

Each project must maintain a separate escrow account, which prevents developers from using funds from one project to finance another, a common risk in less regulated markets.

The law also allows for a portion of the project value to be retained after completion as a defect liability reserve, ensuring that funds are available for post-completion repairs.

¹² Off Plan Dubai, "Dubai Off Plan Property Trends 2025 | Market Insights & Forecasts" (Off Plan Projects, April 1, 2025) https://prelaunch.ae/off_plan_dubai/dubai-off-plan-market-trends-in-2024-2025/

¹³ South Africa has a hybrid or mixed legal system, formed by the interweaving of a civil law system inherited from the Dutch, a common law system inherited from the British, and a customary law system inherited from indigenous Africans. See Thomas, PHJ; van der Merwe, CG; Stoop, BC (2000). *Historical Foundations of South African Private Law*. Durban, South Africa: Lexisnexis Butterworths. p. 7. ISBN 9780409058413.

¹⁴ IFC, "IFC Scaling Housing Finance in Africa" p.2. <https://www.ifc.org/content/dam/ifc/doc/2024/scaling-housing-finance-in-africa-factsheet.pdf>

¹⁵ Article 6. The request to open the escrow account must comprise certain requirements including a certificate of membership in the Dubai Chamber of Commerce and Industry, a trade licence, a title deed of the land to be developed, a financial statement of the estimated cost and revenues of the project certified by an accredited chartered auditor, among others.

¹⁶ Article 7

Dubai's framework is designed to ensure that developers have a meaningful financial stake in their projects. In practice, developers are required to demonstrate financial capacity before launching off-plan sales, often by committing a portion of project costs or providing financial guarantees. This reduces the risk of speculative developments funded entirely by purchaser deposits.

Interim Registration of Off-Plan Interests

Law No. 13 of 2008 introduces a further layer of protection by requiring all off-plan transactions to be registered in the Interim Property Register (commonly known as the Oqood system). Registration is a precondition for the buyer acquiring legal standing in respect of the unit.¹⁷ Registration serves two key functions:

- It gives the buyer a recognised legal interest in the property from the outset
- It significantly reduces the risk of double allocation or resale of the same unit

In effect, buyers are not relying solely on contractual rights; their interests are formally recorded within a regulated system.



Regulatory Oversight and Enforcement

RERA has broad supervisory powers over real estate development projects.

Where a developer fails to meet regulatory requirements or does not commence construction within a reasonable period without justification, the regulator may:¹⁸

- suspend or cancel the project
- intervene in project completion
- facilitate refunds to buyers from escrow funds

In cases of project failure, the escrow structure ensures that funds already paid by purchasers are either protected or recoverable to the extent available in the account.

Where cancellation is due to the developer's fault, Law No. 19 of 2017 requires a 100% refund of all payments made by buyers.¹⁹ However, where construction had already commenced, and funds had been drawn down, buyers are refunded proportionally from the escrow account, and the developer must cover any shortfall within 60 days.²⁰ If they cannot, a specialist tribunal will liquidate the project's assets and distribute the proceeds under court supervision.²¹

¹⁷ Article 3(1)

¹⁸ Article 17(2), Law No. 8 of 2007

¹⁹ Article 11(b)

²⁰ Article 26, Executive Council Resolution No. 6 of 2010

²¹ MSL Advocates, "Cancelled Projects in Dubai – Legal Guidance for Investors" (MSL Advocates) <https://www.msladvocates.ae/real-estate-disputes/cancelled-projects-dubai/>; Khalil Asayesh, "Cancelled and Terminated Real Estate Projects in Dubai: How to Recover Your Payments" September 14, 2025 <https://ir-lawyer.com/en/articles/cancelled-and-terminated-real-estate-projects-in-dubai-how-to-recover-your-payments/>

Key Takeaway

Dubai's framework is built around pre-emptive protection. It addresses risk at the point where it arises, before construction is completed and before losses crystallise. By combining:

- escrow protection
- financial discipline for developers
- formal registration of buyer interests
- and active regulatory oversight

The system significantly reduces the core risks associated with off-plan transactions, particularly developer default and misappropriation of funds.

This stands in contrast to Nigeria's current framework, where these risks are largely managed through contract rather than regulation.

SOUTH AFRICA: A POST-COMPLETION PROTECTION MODEL

To assess the level of protection afforded to off-plan buyers in South Africa, it is necessary to distinguish between two stages of the transaction: before completion and after completion. The strength of South Africa's framework lies primarily in the latter.

On the post-completion side, the framework is substantive. South Africa's primary instrument is the National Home Builders Registration Council (NHBRC) scheme, originally established under the Housing Consumers Protection Measures Act 1998 and updated by the Housing Consumer Protection Act 2024.

Under this framework, it is a criminal offence for a builder to construct a home without being registered with the NHBRC. It is equally an offence to commence construction on a property that has not been enrolled with the NHBRC before development.²² This enrolment triggers a system of mandatory inspections at key stages of construction, ensuring compliance with prescribed building standards.

More significantly, the framework imposes a system of mandatory warranties that every builder must provide to the buyer from the date of occupation. These include:²³

- i. A warranty against minor defects in workmanship within the first three months of occupation;
- ii. A warranty against roof leaks within the first year of occupation; and
- iii. A warranty against major structural defects within the first five years of occupation

Where a builder fails to remedy certain defects, particularly roof leaks or structural issues, the NHBRC may intervene. Through its warranty scheme, it can investigate claims and, where appropriate, facilitate remedial work, providing a measure of financial and regulatory backing to ensure that completed homes meet minimum standards of habitability and structural integrity.²⁴

The result is a system that combines registration, inspection, and warranty protection, offering buyers meaningful safeguards once construction has been completed.

²² NHBRC, "Why Enrol – NHBRC" <https://nhbrc.org.za/why-enrol/>

²³ Ibid

²⁴ NHBRC, "Know Your Rights – NHBRC" <https://www.nhbrc.org.za/know-your-rights/>

CROSS-JURISDICTIONAL INSIGHTS

The contrast between Dubai and South Africa highlights two different regulatory approaches.

South Africa provides strong post-completion protection, ensuring that completed properties meet defined construction and quality standards through inspections and statutory warranties. However, it offers relatively limited safeguards for buyers who commit funds before completion.

Dubai, by contrast, focuses on pre-completion risk management. Its use of escrow accounts, project-level financial controls, and interim registration systems directly addresses the key risks in off-plan transactions, particularly the misuse of purchaser funds, developer default, and double allocation of units.

The practical consequences of this difference are significant. In jurisdictions without escrow protection, buyers who pay upfront may be exposed if a developer becomes insolvent, as their recovery may depend on general insolvency processes. By contrast, in a system where funds are ring-fenced through escrow, purchaser payments are better protected and may be recoverable even if a project fails.

For Nigeria, the implication is clear. While South Africa offers a useful model for strengthening post-completion protections, particularly in relation to construction standards and defect liability, Dubai provides the more instructive framework for addressing the more immediate and material risk in the Nigerian market, namely, the possibility that a developer receives purchaser funds but fails to deliver the project.

TOWARDS A REVITALISED NIGERIAN REAL ESTATE SECTOR

The LASRERA framework demonstrates that effective real-estate regulation is achievable within Nigeria. Building on this, key reforms such as expanding similar regulatory models nationally, introducing structured escrow mechanisms, and establishing statutory defect warranties should form central pillars of any effort to strengthen the sector.

However, these reforms cannot be considered in isolation. Their success depends on the broader structural environment in which they operate. Recommending them without addressing the underlying conditions that make such systems effective in other jurisdictions would provide an incomplete and potentially impractical solution.

A SEQUENCED REFORM AGENDA

Any meaningful reform of Nigeria's off-plan real estate market should be approached in stages, taking into account the structural constraints that currently shape the sector.

- a. **Addressing Land Title and Registration Challenges:** The Federal Government's 2024 partnership with the World Bank on the National Land Registration, Documentation and Titling Programme must be accelerated.²⁵ Until land title is formalised and land registries digitised, construction finance

²⁵ FMHUD, n 44

will remain prohibitively expensive, and the idea of mandatory/contractual escrow will have no firm foundation.

- b. **Expanding Access to Development Finance:** For more structured regulatory tools to work effectively, developers need access to more affordable, medium-to-long-term financing. At present, heavy reliance on high-interest commercial lending encourages dependence on buyer deposits. Introducing concessional funding structures, similar to development finance models used in other jurisdictions, could reduce this dependence and support more sustainable project financing.
- c. **Refining the Tax Framework:** Recent tax reforms have introduced measures that may benefit the real estate sector, including provisions relating to VAT treatment²⁶ and input tax recovery for developers engaged in taxable activities.²⁷ However, further targeted incentives could support housing delivery. These may include:
- recognising affordable housing development as a priority sector for investment incentives
 - reviewing capital allowance regimes to better reflect the capital-intensive nature of construction
- Any such measures should be carefully designed to reduce developer costs while encouraging compliance and formalisation.
- d. **Improving Planning and Approval Processes:** Delays in planning approvals remain a significant constraint. Initiatives such as Lagos State's move toward digital processing of building permits represent progress,²⁸ but similar systems are not yet widely implemented across other states. A more standardised, transparent, and time-bound approval process, supported by digitisation, would improve project timelines and reduce uncertainty.
- e. **Introduction of Escrow as the Capstone Reform:** A mandatory escrow or structured fund-protection mechanism should be considered as a later-stage reform, once supporting conditions are in place. Any such system must reflect market realities, including developer financing constraints and existing transaction costs, to avoid unintended consequences such as reduced housing supply.



²⁶ Nigeria Tax Act 2025, s 186(1)(l).

²⁷ Nigeria Tax Act 2025, s 156(5).

²⁸ Oloniran G and Oloniran G, "LASG Reforms Physical Planning with Digital System" (Punch Newspapers, November 24, 2025) <<https://punchng.com/lasg-reforms-physical-planning-with-digital-system/>>

PRACTICAL MEASURES FOR OFF-PLAN TRANSACTIONS IN NIGERIA

Pending broader regulatory reform, risk management in off-plan transactions remains largely dependent on careful structuring, due diligence, and professional advice.

FOR BUYERS:

i. Conduct Pre-Commitment Due Diligence:

In Lagos, buyers should confirm that the developer is registered with LASRERA registration before entering into any agreement. Outside Lagos, conduct searches at the Corporate Affairs Commission, inspect previously completed projects, and, where possible, speak with previous buyers.

ii. Negotiate Milestone-Linked Payment Schedules: Negotiate milestone-based payments instead of tying payment to calendar dates. That remains the most practical safeguard available.

iii. Pursue Voluntary Escrow Arrangements: Nigeria currently has no statutory escrow requirement for off-plan transactions, and developers are generally unlikely to agree to voluntary escrow because it restricts access to funds. In rare cases, sophisticated buyers may negotiate for payments to be held by an independent agent, with release tied to verified construction milestones. Such arrangements, however, are exceptional and entirely dependent on the developer's willingness.

iv. Retain Competent Legal Counsel: Retain a lawyer with experience in real estate transactions to negotiate and protect key contractual terms, including payment schedules, penalties, price adjustments, refunds, retention clauses, and completion obligations. Counsel should also ensure that appropriate title documents are obtained at each stage of the transaction including a contract of sale upon part payment, and a deed of assignment upon full payment. Where feasible, the buyer should immediately register their title.

It is also important that the agreement contains the indemnity protection imposed by the LASRERA Law, ensuring the buyer is indemnified in the event of non-completion of the project or any breach of contract.²⁹

v. Maintain Comprehensive Transaction Records: Retain all receipts, correspondence, and photographs of site visits; in Lagos, ensure the agreement is registered with LASRERA for off-plan arrangements constituting tenancies exceeding five years, and outside Lagos, ensure comprehensive documentation to support any potential legal claim.

Developers who regard robust buyer protections as a competitive advantage rather than a burden are best positioned to attract institutional investors, diaspora buyers, and repeat clients in an increasingly scrutinised market, as offering voluntary escrow, milestone-based payment schedules, and independent construction monitoring will signal to every buyer, investor, and regulator that you are certain of your ability to deliver, which is rare in a fraud-ridden sector like real estate.

²⁹ Section 32(4), LASRERA Law of 2022

CONCLUSION

Off-plan property transactions are inherently risky because buyers commit capital for assets that do not yet exist. In well-regulated markets, however, they are a legitimate and commercially valuable mechanism, benefitting buyers, developers, and the broader housing sector. In Nigeria, the challenge is not the off-plan model itself, but the regulatory environment surrounding it.

Lagos State has demonstrated that meaningful reform is possible. The next step is to extend and strengthen these protections across the country, while addressing the underlying structural constraints that affect the real estate sector.

Until such reforms are implemented, the responsibility for managing risk rests largely on the parties involved and, importantly, on the lawyers advising them to ensure that transactions are properly structured, risks are clearly allocated, and protections are built into the contractual framework.

This article is for general informational purposes only and does not constitute legal advice. For specific advice on real estate transactions, please contact Tope Adebayo LP.

AUTHORS



OLUCHI NWAIZIM
SENIOR ASSOCIATE



PHILIP OLADIMEJI
ASSOCIATE

TALP's Corporate Commercial Department
For further enquiries, log onto www.topeadebayolp.com

Do you need to get in touch with us, to know more on how we can help you and your business? Kindly contact us by using any of the details provided below:

TOPE ADEBAYO LP

3rd Floor, The Phoenix, 31 Mobolaji Bank Anthony Way, Ikeja Lagos, Nigeria.

p: +234 708 869 9174, +234 813 532 1156

e: info@topeadebayolp.com

w: www.topeadebayolp.com

