

Camposol Residents Association

The Garrigues Report

Conclusions :

From this study the following conclusions may be reached with regard to the legal situation of the Camposol estate.

Transfer of the control of the development works for sector A and sector BCDF should take place in phases, as and when the terms set in the plan for its conclusion are met. Once the said terms have all elapsed, the developer shall be granted an extension within which to remedy any technical defects that may be found in the works with regard to the approved projects.

Once this new term has elapsed, if the works should still not meet the qualities and technical characteristics that are sufficient to allow transfer of control to the council, the council has the power (compulsory, in order to defend the general interest and legality that it protects) to execute the bank guarantees and security provided by the developer in order to ensure the proper execution of the works. It shall proceed to execute the works, chargeable to said guarantees, in proper manner and to take over control of the said works once they have been executed and the legality of the planning department has been re-established.

This power held by the Council becomes a duty as against citizens, who should address themselves to the council to demand these powers be exercised in order to defend their interests and the legality of the plan.

These time limits have been generously exceeded in the case of sector A. But even in the case of sector BCDF (where they have not been fully exceeded) it would be possible for the interested citizens to seek the protection they are owed from the Council (by statutory provision), making use of the powers that have been granted for this purpose. This is so because although formally the limits have not been exceeded in sector BCDF, the fact is that likewise the dwellings and establishments should not have been occupied. Therefore the situation of this sector is particularly special, given that, as has been stated before, even though the time limits have not been formally exceeded, the Council is under a duty to intervene in order to ensure the proper provision of the services to those citizens who occupy the sector (with its consent).

In any event, it is noted that the development of sector BCDF has not been executed in accordance with the provisions of the applicable plan, which is in the course of being amended. The council should ensure the conclusion of the estate in accordance with what has been projected.

For its part, the duty of conservation of the estate pertains in sector A to the owners of the area, without prejudice to the duties that may correspond to the developer pursuant to the private sale and purchase agreements. For this purpose, given the provisional transfer of control that occurred years ago, the urban conservation body was set up, and there is no record that carries out any activities whatsoever.

Likewise, with regard to the material content covered by this duty of conservation, the provisions of the by-laws of the Conservation Body, that has been set up should be complied with, where they state the exact scope of the duties undertaken by the owners.

The situation is quite different for sector BCDF, for which the planning regulation instruments (having legal effect) expressly provide that the developer shall be responsible for the conservation thereof until such time as the control of the works is transferred to the Council, at which time the owners shall become a part of the Conservation Body set up for sector A.

It is convenient that the owners should consider that the commencement of legal proceedings is a suitable option in the event of breach of the duties and responsibilities taken on both by the developer (demanding performance of the existing sale and purchase agreements through the civil courts), and by the Council (so that it may exercise its powers), in order to avoid further delays and losses.

As has been stated before, the actions could be commenced by the CRA, in its capacity as a residents association, although it might be convenient to accompany this exercise of individual actions by the private owners before the civil courts. This question should be examined properly where appropriate.