

# Particularities Regarding the Contract of Sale of a Future Good. Practical Applicability and Proposals *de Lege Ferenda*

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## **Abstract**

*The sale of a future good is a legal institution that allows the transfer of ownership of a good that does not yet exist but is to be created or acquired later by the seller. In Romanian law, this legal operation is regulated by the Civil Code and raises a series of legal aspects regarding the formation of the contract, risks, conditions, and effects. This legal institution is differentiated from the bilateral promise of sale, which represents the agreement in which both parties commit to finalize, in the future, a sale contract regarding a specific good, at a fixed price or one that can be determined later. This represents an instrument that allows parties to secure their interests before concluding a definitive, ownership-transferring contract. The article analyzes the legal regime of the sale of a future good, the conditions of validity, and the implications for the contracting parties, in comparison with the legal nature of the promise of sale, its effects, and its practical implications in contractual matters. The present study also presents the applicability of the sale of a future good in various fields of activity, performs a comparative analysis of national and European legislation regarding the legal instruments that real estate developers use for the sale of future properties, and finally develops „de lege ferenda” proposals for improving the current legislative framework.*

**Keywords:** contract, sale of a future good, contingent rights, bilateral promise of sale, transfer of ownership.

**JEL Classification:** K11, K12, K15

## **1. Preliminaries. Regulation of the sale of a future good in the Civil Code**

The sale contract is one of the most frequent contracts, being regulated by the principle of consensualism. In the case of the sale of a future good, this principle is nuanced, as the object of the contract does not exist at the time of its conclusion, which raises issues related to the obligation of result, conditionality, and the transfer of ownership.

The sale of future goods has been recognized and applied in various sectors of the Romanian economy, especially in construction, production, and agriculture. An example of the application of this legal instrument is in the real estate sector, where developers sell apartments in the project phase. Also, in the agricultural field, the sale of future crops is a common practice, subject to specific rules regarding the risks and quality of delivered goods.

Essentially, this sale involves a commitment by the seller to deliver to the buyer a good that is to be made or acquired later. The Civil Code regulates this type of contract, providing a clear legal framework, but also certain limitations aimed at protecting the parties involved.

Any good can be sold as a future good, unless the law or the agreement of the

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parties prohibits it. According to art. 1658 para. (1) of the Civil Code, "If the object of the sale is a future good, the buyer acquires ownership when the good is realized."

This provision enshrines the possibility that a good that does not exist at the time of the contract's conclusion can be the object of a valid sale. However, there are some limitations, such as the impossibility of selling future goods that cannot be created or are prohibited by law.

Judicial practice has outlined clear rules regarding the validity of these contracts, the rights and obligations of the parties, as well as the possible legal consequences in case the future good does not come into existence or is not delivered in accordance with the contractual provisions.

## **2. Essential conditions for the validity of the sale contract of a future good**

According to art. 1228 of the Civil Code, unless there are contrary legal provisions, contracts can also relate to future goods. By the sale contract, the seller transfers or, as the case may be, undertakes to transfer to the buyer the ownership right over a good in exchange for a price. The very definition of the sale contract contained in art. 1650 of the Civil Code admits the possibility of transferring the ownership right over a good at a moment subsequent to that in which the sale contract itself is concluded. Such a situation is that of the sale of a future good, when the buyer acquires ownership at the moment when the good is realized. To avoid contradictions regarding the realization of the good, paragraph (5) of art. 1658 of the Civil Code comes to the aid of the parties to the sale contract and presents the meaning of the term "the good is realized." Therefore, within the meaning of this article, the good is realized when it becomes suitable for use according to the purpose for which the sale contract was concluded.

The sale of a future good is subject to the rules and principles that govern the conclusion of civil contracts under common law.

Thus, upon its conclusion, it must fulfill all those essential conditions for the validity of a convention, namely: the capacity to contract; the valid consent of the party who undertakes an obligation; a determined or determinable object; a licit cause.

However, the specific particularities of the sale of a future good in relation to other civil conventions also determine a series of particularities regarding the substantive conditions of its validity.

The sale of a future good can be validly concluded, like any civil convention, only by persons with full exercise capacity, i.e., by adults, with the exception of those placed under interdiction. Minors, who have restricted exercise capacity, conclude acts of disposition personally, with the consent of the legal representative and with the authorization of the guardianship authority. Regarding the special capacity to sell or contract, it must exist at the moment of concluding the sale contract, even if the transfer of ownership operates at the moment of the good's realization. This is because, unlike the bilateral promise of sale, which is followed by the conclusion of a proper sale contract, the sale contract of the future good only consolidates at the moment of the good's realization. The bilateral promise of sale does not transfer ownership of the good, in which context we can only speak of the special capacity to sell or buy at the

moment of the definitive conclusion of the promised contract, which produces transfer effects from the moment of its conclusion.<sup>2</sup>

The consent of the parties refers to the manifestation of the agreement of the parties, so that in exchange for the price paid by the buyer, the seller transfers the ownership right over the future good, the execution of this obligation being postponed until the good is realized. Considering that the obligation assumed by the parties concerns an ownership-transferring effect, for the valid conclusion of the sale contract, it is necessary, but also sufficient, that the act be concluded between persons with discernment, the consent must be expressed with the intention to produce legal effects, must be externalized, and must not be affected by any vice.<sup>3</sup>

The Civil Code differentiates the object of the contract from the object of the obligation, providing in art. 1225 and 1226 that "the object of the contract is the legal operation, the sale, the lease, the loan, and others of the like, agreed by the parties, as it results from the entirety of the contractual rights and obligations," and "the object of the obligation is the performance to which the debtor commits."

The contract for the sale of a future good has as its object the sale operation. Regarding the object of the obligation, we are talking about a derived, double object: for the seller, the object of the obligation is represented by the sold good, while for the buyer the object of the obligation is represented by the price.

Considering that at the moment of concluding the sale contract, the good, the object of the seller's obligation, does not exist, for a sale of a future good to be valid, it must meet the following conditions:

- Determinability of the good - even if the good does not exist at the moment of concluding the contract, it must be sufficiently well determined or determinable. For example, an apartment in a building under construction must be identifiable based on an approved plan. Or, a future crop must relate to a certain type of crop obtained from agricultural land or to an agricultural area identified in the contract.

- Seller's obligation to realize the good - if the future good is to be created by the seller, he has the obligation to take all necessary steps for its realization.

- Transfer of ownership - according to the Civil Code, the transfer of ownership of a future good can only take place when it comes into existence. This represents an exception to the traditional principle of ownership transfer at the moment of concluding the contract.

The conditions that any good must meet in order to be sold are the following: to be in civil circulation, to exist or be able to exist in the future, to be determined or determinable, to be possible, to be lawful and moral.

In the case of future goods, additional emphasis must be placed on the condition that the good be determinable. According to art. 1226 of the Civil Code, "under the sanction of absolute nullity, it must be determined or at least determinable." Determination is made in the case of specific goods, by specifying their individual characteristics, specifying the nature of the good, its position in space, or the identification elements. In the case of generic goods, the determination is made by

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<sup>2</sup> Dan Chirică, *Treatise on Civil Law. Special Contracts. Vol. I. Sale and Exchange*. Bucharest: Hamangiu 2023, p. 153.

<sup>3</sup> Francisc Deak, Lucian Mihai and Romeo Popescu. *Treatise on Civil Law. Special Contracts. Vol. I. Sale and Exchange. VI*, Bucharest: Universul Juridic, 2023, p. 183.

indicating the species and quantity of these goods. The determination can be made precisely at the date of concluding the contract or some elements can be given to determine the object in the future (e.g., building permit, technical plans, etc.).

Regarding the cause of the convention, no particularities have been noted in judicial practice or legal literature regarding the sale contract of a future good, therefore the rules of common law will apply. Consequently, the sale contract of a future good based on an illicit or immoral cause, or on a false cause, will be null, like any other civil convention.

The sale contract of a future good can be concluded under private signature in the case of future movable goods. In contrast, the sale contract of a future construction must be authenticated by a notary and recorded in the land registry. This requirement results from the regulations of the Civil Code and specific legislation regarding real estate publicity, considering the following aspects:

- Mandatory authentic form - According to art. 1244 of the Civil Code, contracts whose object is the transfer or establishment of a real estate right must be concluded in authentic form, under the sanction of absolute nullity. Thus, the sale of a future construction requires the authentication of the act by a public notary.

- Recording in the land registry - According to Law no. 7/1996 on cadastre and real estate publicity, the recording in the land registry of the sale contract of the future construction is necessary for the opposability of rights against third parties. The request for recording is made by the public notary, seller, land owner, or buyer, through a registration application addressed to the cadastre and real estate publicity office in whose area the land on which the future good will be built is located. Also, the urbanism certificate and the building permit for the future building can be recorded. Depending on the situation, the following forms of recording may appear: recording of the right to build - indicates that a certain person has the right to build a construction on the land; recording of the sale contract - protects the buyer's rights over the future construction; recording of the completion of the construction - upon reception at the completion of works and obtaining the reception report. After the completion of the construction, the buyer will request the deletion of the recording and the registration of the ownership right over the definitive construction.

- Buyer protection - Through authentication and recording, the buyer benefits from legal guarantee regarding his right over the construction, preventing possible successive sales or disputes related to the respective good.

### **3. Legal nature of the rights arising from the conclusion of the sale contract of a future good**

The sale of a future good creates a complex legal situation, in which the buyer acquires both a claim right and a contingent ownership right, both conditioned by the future existence of the good.

The buyer acquires a claim right against the seller, by which the latter undertakes to do everything necessary for the good to exist and to transfer it at the appropriate time. The buyer also acquires a contingent ownership right over the future good. This right becomes effective only when the good comes into existence and all contractual and legal conditions for the transfer of ownership are met.

The theory of contingent rights is based on the idea that a right does not have

to arise instantaneously, but can be perfected gradually, by the successive addition of its constituent elements. Thus, between the absence of any right and a full, perfect right, there is an intermediate stage: the contingent right.

This theory recognizes that the parties can decide that a right arises in stages, either by the successive addition of the elements of a right, as a result of a single legal act, as in the case of the sale of a future good, where the contract is concluded but the object of the right (the good) is added later, or by concluding successive legal acts, as in the situation of a pre-contract of sale followed by the sale contract.

In these cases, the ownership right is built gradually, by the successive addition of the necessary elements. The rights arising in these transitory stages are also temporary, having the potential to transform into full rights. Of course, the parties can choose to create a full right from the beginning. But there are situations in which it is logical and legal to postpone the moment when all the elements of the right are gathered.<sup>4</sup>

Thus, contingency represents an intermediate situation between the absence of any right and the birth of a perfect right. This contingency consists precisely in the absence of an element of the right on which its perfect completion depends, but which the parties have decided to complete later. Whether it is consent, object, or parties, one of these elements is missing, thus determining the birth of a contingent right.

The specialized literature<sup>5</sup> suggests that a contingent right is situated on a lower level than rights affected by modalities (term, condition, charge) or even conditional rights, but exceeds the stage of a simple desire. In simple terms, contingent rights represent an intermediate category between subjective desire and the actual right, having the potential, but not the certainty, to materialize in the future.

The sale of a future good is an example consecrated by doctrine and equally by jurisprudence in which a contingent right is born. In the case of the sale of a future good, all the elements necessary for the birth of the ownership right are met, except for an essential one: the object.

An important distinction must be made: the validity of the sale contract will not be affected by the absence of the object of the contract, in its materiality, but will only influence the moment when the transfer of ownership from the seller to the buyer takes place. The buyer acquires the ownership right over the good only at the moment of its realization, and until then, he holds a contingent ownership right over the object of the sale. The contingency in this situation consists precisely in the realization of the good, an obligation that the seller assumes and for whose non-fulfillment, in case of fault, he is liable to the buyer.

Also, the sale contract of a future good, which gives rise to a contingent ownership right in the case of the good's realization, should not be confused with a sale contract affected by a condition. The differences between condition and contingency are manifested both in terms of their scope and effects.

Regarding the scope, the condition affects a right already formed, complete, which lacks no essential element. The conditional right is complete in terms of its

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<sup>4</sup> Vlad Ștefan, „On a Counter-Intuitive Theory of Eventual Rights.”, (2013): <https://www.juridice.ro/268768/despre-o-teorie-contra-intuitiva-a-drepturilor-eventuale.html>, accessed on 14 November 2025.

<sup>5</sup> Bianca Bucur, „Eventual Rights”, (2015): <https://abcjuridic.ro/drepturi-eventuale/>, accessed on 14 November 2025.

internal elements and awaits an external event to be extinguished (resolutive condition) or to produce its effects (suspensive condition). On the other hand, contingency affects an incomplete right, which lacks an essential element (e.g., object, consent). In this case, we are talking about an intrinsic (internal) event to the right, related to the completion of the missing element. The contingent right awaits the appearance of the missing element to transform into a complete right.<sup>6</sup>

Regarding the effects it produces, the realization of the condition retroacts to the moment of concluding the legal act under condition, and the non-realization of the suspensive condition or the realization of the resolutive condition leads to the retroactive extinction of the act. In contrast, the realization of the contingency leads to the completion of the creditor's right, transforming it into a complete right at the date of the contingency's realization, without retroactive effect, and the non-realization of the contingency does not extinguish the legal act, but may attract the debtor's liability for non-fulfillment, if the conditions of contractual liability are met.

In conclusion, condition and contingency are distinct concepts, which affect rights in different ways. The condition is an external event that influences a complete right, while contingency is an internal event that completes an incomplete right. Also, their legal effects are different, especially regarding retroactivity.

#### **4. Effects of the sale contract of a future good**

The effects of the sale contract of a future good are complex and vary depending on the nature of the good and the contractual clauses.

The seller has a series of specific obligations, which derive from the particular nature of this type of contract. These obligations can be classified into several categories, as follows:

a. Obligation to make efforts for the existence of the good. The seller is obliged to make all necessary efforts for the good to exist in the future, according to the specifications agreed in the contract. This may include obtaining the necessary authorizations, carrying out the construction, cultivating the land, etc. This obligation is essential, as the existence of the good is a condition for the transfer of ownership.

b. Obligation to transfer ownership. When the good comes into existence, the seller is obliged to transfer ownership to the buyer. The moment of transfer of ownership varies depending on the nature of the good (real estate or movable) and the contractual clauses. In the case of real estate, the transfer is made by registration in the land registry.

c. Obligation to hand over the good. The seller is obliged to hand over the good to the buyer, in the condition and at the term agreed in the contract. The handover must be made together with all accessories and necessary documents.

d. Warranty obligation. The seller guarantees the buyer against eviction (loss of ownership by the action of a third party) and against hidden defects (defects that were not visible at the time of sale). This warranty ensures the buyer's protection in case the good does not meet expectations or is affected by legal problems.

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<sup>6</sup> Vlad Ștefan, "Theoretical Considerations on the Wrong Solution by the High Court of Cassation and Justice - Commercial Section - of an Action for Absolute Nullity of the Sale-Purchase Contract of a Real Estate.", *Dreptul*, no. 1, 2011: 164.

Depending on the nature of the good and the contractual clauses, the seller may have other specific obligations.

Failure to comply with the obligations by the seller may attract his contractual liability, including the obligation to pay damages.

In the sale contract of a future good, the buyer has, in principle, the following obligations:

a. Obligation to pay the price. The buyer is obliged to pay the price agreed in the contract, at the terms and in the modalities established. This obligation is essential, as the payment of the price represents the consideration for the good he will receive.

b. Obligation to take possession of the good. The buyer is obliged to take possession of the good at the time of delivery, in accordance with the contractual clauses. This obligation includes verifying the condition of the good and accepting it, if it complies with the agreed specifications.

c. Obligation to bear the costs of the sale. In the absence of a contrary clause, the buyer bears the costs of the sale contract. Sale expenses are considered, for example, the costs of authenticating the contract.

Depending on the nature of the good and the contractual clauses, the buyer may have other specific obligations.

Failure to comply with the obligations by the buyer may attract his contractual liability, including the obligation to pay damages.

In addition to the main obligations of the parties (payment of the price and transfer of ownership), the sale contract of a future good can also produce other effects, depending on the specific circumstances and the contractual clauses.

An important effect is the distribution of the risk of non-realization of the good. In general, the risk is borne by the seller, who will be obliged to return the price and, possibly, to pay damages.

The seller's liability for the non-realization of the good can occur in various situations, generated by the non-fulfillment of his contractual obligations. Considering that, most often, the realization of the future good depends on the seller's actions, if the seller does not take all the necessary steps for the good to exist, he will be responsible. For example, if the seller of an apartment under construction does not obtain the necessary authorizations or does not carry out the works according to the project, he will be responsible for the non-realization of the good. Also, if the realized good does not meet the specifications agreed in the contract, the seller will be responsible. For example, if the seller delivers a good with characteristics inferior to those agreed, he will be responsible for non-fulfillment of contractual obligations. If the seller does not deliver the good at the deadlines established in the contract, he will be responsible for delays and possible damages caused to the buyer. In accordance with the Civil Code, the seller is also liable for hidden defects of the realized good.<sup>7</sup>

There are also situations in which the buyer may bear this risk, either by agreement of the parties or as a result of specific circumstances:

In the case of aleatory contracts, the buyer assumes the risk of the future existence of the good. A typical example is the sale of a future crop, where the buyer pays a fixed price, regardless of whether the crop will be abundant or not. If the crop is not realized for reasons beyond the seller's control (e.g., unfavorable weather

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<sup>7</sup> Romeo Dincă, *Special Civil Contracts in the New Civil Code*, Bucharest: Universul Juridic, 2013, p. 262.

conditions), the buyer bears the loss. Also, the parties may agree, through contractual clauses, that the risk of non-realization of the good be transferred to the buyer. This can happen, for example, in the case of construction projects, where the buyer assumes the risk of possible delays or technical problems. If the non-realization of the good is due to a fortuitous event or a force majeure event (e.g., an earthquake or a flood), the risk may be borne by the buyer, depending on the contractual clauses and the applicable legal provisions. If the non-realization of the good is due to the buyer's actions or omissions, he will bear the risk. For example, if the buyer unjustifiably refuses to receive the good at the established term, he will be responsible for possible damages.

The sale contract of a future good can have indirect effects on third parties, especially in the case of real estate. For example, the registration in the land registry of the buyer's ownership right makes it opposable to third parties. This means that third parties cannot ignore the buyer's ownership right, even if they were not a party to the contract. In the case of movable goods, opposability is usually achieved through possession. Contractual obligations are transmitted to heirs.

The sale of the future good may affect the rights of the seller's creditors, especially if the future good represents a potentially important asset of the seller's patrimony. Creditors may, under certain conditions, challenge the validity of the sale contract in court, if it prejudices their rights.

The buyer's creditors cannot directly go against the seller for the non-realization of the future good. The contractual relationship is established between the seller and the buyer, and the buyer's creditors are not parties to this contract. However, there are certain situations in which the buyer's creditors may have certain indirect rights or actions. If the buyer is inactive and does not exercise his rights against the seller (e.g., the right to claim damages for the non-realization of the good), the buyer's creditors can exercise these rights on behalf of the buyer, through the oblique action. This action allows creditors to recover the amounts owed by the seller to the buyer, in order to satisfy their own claims. If the sale contract of the future good was concluded with the intention to defraud the buyer's creditors (e.g., to take a large sum of money out of the buyer's patrimony as a price for a future good that has no chance of being realized), they can attack the contract in court, requesting its annulment. If the buyer goes bankrupt, the judicial administrator or the judicial liquidator can exercise the buyer's rights against the seller, in order to recover the assets that can be used to satisfy the creditors' claims.<sup>8</sup>

## 5. Resolution of the sale contract of a future good

If the seller fails to fulfill his obligations (e.g., does not make the necessary efforts for the existence of the good), the buyer may request the resolution of the contract. Also, the buyer may request the resolution of the contract if the realized good does not meet the agreed specifications.

Resolution leads to the termination of the contract with retroactive effect, i.e., it is considered that it was never concluded. This means that the obligations of the parties cease, and they are released from any contractual commitments. The parties are obliged to mutually return the performances made under the contract. The seller must

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<sup>8</sup> Francisc Deak, Lucian Mihai and Romeo Popescu. *op. cit.*, 2023, p. 184.

return the price received from the buyer. In the situation where the resolution of the contract is due to the fact that the realized good does not meet the agreed specifications, the buyer must return the good to the seller.

The party who has suffered damages as a result of the resolution of the contract may request the payment of damages from the other party. The damages will cover the actual damage suffered by the injured party, such as expenses incurred, losses suffered, or unrealized benefits.

Resolution can also have other effects, depending on the nature of the good and the contractual clauses. For example, in the case of real estate, resolution can lead to the deletion of recordings or the buyer's ownership right from the land registry.

The party requesting resolution must prove the culpable non-fulfillment of obligations by the other party. The court analyzes the circumstances of each case to determine the effects of resolution.

Partial realization of the future good can generate a series of complex legal consequences, which depend on the specific circumstances of each case and the contractual clauses established by the parties. The buyer has the choice to either request the termination of the sale or to claim a corresponding reduction in the price. The same solution applies in the case of the sale of goods from a limited genus, when the limited genus has been only partially realized and, for this reason, the seller cannot individualize the entire quantity of goods provided in the contract. If the partial non-realization of the good or, as the case may be, of the limited genus was determined by the seller's fault, he is obliged to pay damages.

The intention of the parties regarding the partial realization of the good can be specified from the moment of concluding the sale contract of the future good. If the contract expressly provides for the possibility of partial realization and establishes the consequences of this situation, the contractual clauses will apply. In the absence of specific contractual clauses, the general rules of civil law regarding the interpretation of contracts and the execution of obligations will apply.<sup>9</sup>

If the buyer wishes to purchase the partially realized good, the seller will be obliged to hand over the realized part of the good, in accordance with the contractual specifications. Depending on the nature of the good and the contractual clauses, the seller may be obliged to continue the steps for the full realization of the good or to return a part of the price. Also, the seller may be obliged to pay damages for the damages suffered by the buyer as a result of the partial realization of the good.

The buyer will be obliged to pay the price for the realized part of the good, in accordance with the contractual clauses. Depending on the nature of the good and the contractual clauses, the buyer may have the right to refuse to take possession of the realized part and to request the resolution of the contract.

Partial realization of the good can constitute a reason for resolution of the contract, especially if the realized part does not meet the buyer's needs or if the full realization of the good becomes impossible. The court will analyze the specific circumstances of each case to determine if the resolution of the contract is justified.

In certain situations, the buyer may request a price reduction, in proportion to the unrealized part of the good. This option is applicable especially when the realized

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<sup>9</sup> Constantin Stătescu, Corneliu Bârsan, *General Theory of Obligations*. IX. Bucharest: Hamangiu, 2008, p. 158.

part of the good can be used by the buyer, but does not fully meet his expectations.

The party who suffers damages as a result of the partial realization of the good may request the payment of damages from the other party. The damages will cover the actual damage suffered by the injured party.

## **6. Delimitation from the bilateral promise of sale**

The sale contract of a future good and the bilateral promise of sale are two distinct legal instruments, although both refer to the transfer of ownership of a good in the future.

Regarding the legal nature, the sale contract of a future good is a proper sale contract, in which the parties assume definitive obligations of ownership transfer and price payment, even if the good does not yet exist at the time of concluding the contract. The transfer of ownership usually takes place when the good comes into existence.

The bilateral promise of sale is a pre-contract, a preliminary agreement by which the parties undertake to conclude in the future a sale contract whose main elements they prefigure<sup>10</sup>. The parties must establish, in the pre-contract, the essential elements of the promised contract, i.e., at least its nature (sale), the object of that contract (the good to which it refers), and the price. A pre-contract that does not specify these elements would be affected by absolute nullity, due to the indeterminate nature of the promise's object. The reciprocal obligation assumed by the parties to conclude a sale contract in the future refers not only to the parties' duty to subsequently give their consent for the conclusion of the sale contract but also to the fulfillment of any other operations necessary for this purpose, such as obtaining any authorizations, fulfilling the formalities for exercising the pre-emption right, presenting the act to the public notary for authentication, as the case may be. The pre-contract does not transfer ownership of the good, but only creates the obligation to conclude the sale contract in the future.<sup>11</sup>

The sale contract of a future good has as its object a good that does not exist at present, but which will exist in the future. The bilateral promise of sale can have as its object any good, existing or future. Also, the promise can have as its object the sale of another's good, because the non-owner has the possibility to buy from the owner the good offered for sale (in reality the good referred to by the promise of sale) and then be able to perfect the promised sale.

From the point of view of effects, the sale contract of a future good gives rise to definitive obligations of ownership transfer and price payment, and in case of non-execution, the injured party can request the forced execution of the obligations or the resolution of the contract, with damages.

The bilateral promise of sale only gives rise to the obligation to conclude the sale contract in the future. In case of non-execution, the injured party can request damages or, in certain cases, the pronouncement of a court decision that acts as a sale contract. Obtaining a decision that acts as a sale contract ensures the forced execution of the obligation to do, assumed conventionally by the promise of sale, without

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<sup>10</sup> Ioan Popa, *Civil Contracts. From Theory to Practice*. Bucharest: Universul Juridic, 2020, p. 138.

<sup>11</sup> Traian Dârjan, „Preliminary Sale-Purchase Agreement” *Dreptul*, no. 3, 2000, p. 55 et seq.

conferring the legal nature of the sale contract. By the decision pronounced by the court, the creditor's right (promising buyer) to obtain the execution in kind of the obligation to conclude the contract by which the ownership right is transferred, an obligation assumed by the debtor (promising seller), is valued. However, the court decision cannot be confused with the proper sale contract, in the sense of negotium. If the promising seller alienates the good that is the object of the promise, the legal consequences depend on the opposability of the inalienability clause: if it has been made opposable according to art. 628 of the Civil Code, the promising buyer can request the annulment of the alienation act and the pronouncement of a decision that acts as a sale contract; otherwise, the alienation act to a third party in good faith remains valid, but the promising buyer has the right to damages from the promising seller for breach of contractual obligations.<sup>12</sup>

The parties who conclude a synallagmatic promise of sale can also establish accessory clauses to the essential ones, clauses intended to ensure the execution of the assumed obligations. In case of non-fulfillment, the clauses can provide for financial sanctions for the party responsible for non-execution and compensation for the injured party. Examples of such clauses are the penalty clause and the earnest clause. In other situations, the parties can agree on accessory clauses that allow them, under certain conditions, to unilaterally terminate the commitment to conclude the promised contract, through withdrawal clauses or forfeiture clauses.<sup>13</sup>

In conclusion, the purpose of the sale contract of a future good is the immediate transfer of ownership right over a future good, once it exists, while the bilateral promise of sale aims to establish a preliminary legal framework for the conclusion of a sale contract in the future, providing security to the parties. As an effect of the promise of sale, the promising buyer's patrimony will give rise to the right to claim from the promising seller the conclusion of the sale contract under the agreed conditions. Also, the pre-contract can provide for the early handover of the good, a situation in which the promising buyer acquires the right to claim its handover, as well as to collect its fruits. All these are claim rights.

## **7. Areas of applicability of the sale contract of a future good**

The sale of future goods has been recognized and applied in various sectors of the Romanian economy, especially in the real estate, agricultural, and industrial sectors. Judicial practice has outlined clear rules regarding the validity of these contracts, the rights and obligations of the parties, as well as the possible legal consequences in case the future good does not come into existence or is not delivered in accordance with the contractual provisions.

**Sale of future real estate.** One of the most frequent cases of selling a future good is that of dwellings in the project or construction stage. Real estate developers conclude future construction sale contracts or sale pre-contracts by which they undertake to deliver apartments or houses to future owners, once completed. Case law in the field has highlighted several specific legal issues:

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<sup>12</sup> Dumitru Andrei, Marieta Ronea Avram. „The Obligations of the Promissory Seller and Their Forced Execution I.” *Dreptul*, no. 3, 1995, p. 25-26.

<sup>13</sup> Francisc Deak, Lucian Mihai and Romeo Popescu, *op. cit.*, p. 184..

- Moment of transfer of ownership: According to the provisions of art. 1658 of the Civil Code, the ownership right over a future good is not transferred at the time of concluding the contract, but only when the good comes into existence. The courts have confirmed that a contract that expressly provides for the immediate transfer of ownership of a future good is ineffective, unable to produce the desired legal effects.

- Developer's obligation to complete the construction: In situations where a developer fails to complete the building, buyers can request either the resolution of the contract and the return of the amounts paid, or the forced execution of the assumed obligations.

- Differences between the project and the delivered good: In several cases, the courts have been seized with disputes in which buyers have complained that the delivered good (the apartment) did not comply with the initial specifications. Court decisions have confirmed that the seller is obliged to deliver the good in accordance with the contract, and any significant difference may constitute grounds for requesting damages or even termination of the contract.

**Sale of future crops and other agricultural goods.** Another area where the sale of future goods is frequently encountered is agriculture. Farmers often sell future crops, assuming the obligation to produce and deliver the quantities of cereals, vegetables, or fruits specified in contracts. Legal issues encountered in practice include:

- Force majeure and the risk of crop failure: In the case of extreme weather conditions or natural disasters that affect agricultural production, farmers can invoke force majeure to justify the impossibility of delivering the promised crop. The courts have carefully analyzed these cases and have distinguished between situations where farmers have taken reasonable measures to protect crops and those where the risk could have been better managed.

- Setting the price of the future crop: In some contracts, the price of the crop is set in advance, which can generate disputes if market prices fluctuate significantly. The courts have ruled that, in the absence of a contractual clause allowing price adjustment based on the market, the parties are obliged to respect the initially agreed price, even if it becomes disadvantageous for one of them.

- Quality and quantity of the delivered good: A frequent problem in this type of contract is the delivery of products that do not meet the agreed standards. In such cases, buyers can request a price reduction, replacement of the good, or even resolution of the contract.

**Sale of equipment and industrial products.** The equipment and consumer goods production industry often involves the sale of future goods, such as machinery to be manufactured according to customer specifications. Relevant legal aspects:

- Delay in the delivery of the future good: If a manufacturer does not meet the delivery deadline, the beneficiary can request penalties or even termination of the contract, if the delay is significant. The courts have established that penalties must be clearly provided in the contract and be reasonable in relation to the value of the good.

- Product customization and the obligations of the parties: In the case of equipment specially manufactured for a certain customer, the seller cannot resell the good to other buyers if the beneficiary refuses to take possession of it. The courts have ruled that in such situations, the beneficiary may be obliged to pay damages to the seller, especially if the latter has invested significant resources in production.

## 8. Regulations applicable in other member states

Regarding real estate developers and the sale of future goods, there is relevant practice in several European countries, with regulations and jurisprudence varying from one state to another. In general, these regulations aim to protect consumer rights and ensure transparency and fairness in real estate transactions. In this context, there are several European countries with relevant regulations and practices that can provide a comparative framework for Romania:

**1. France: Consumer protection and regulations regarding the sale of future goods.** In France, the sale of future goods, especially in the real estate sector, is regulated by the provisions of art. 1601 of the French Civil Code and art. 261 – 263 of the Construction and Housing Code, which imposes consumer protection in transactions for the sale of unfinished properties. The law specifically regulates sales of properties to be built and establishes strict requirements regarding the information to be provided to buyers.

According to this regulation, real estate developers are required to provide buyers with detailed information about the real estate project (e.g., construction plans, delivery deadline, total price, and payment conditions), and sales contracts must be accompanied by a delivery guarantee, which protects the buyer in case the developer does not complete the construction within the established deadline.

French jurisprudence emphasizes that if the developer does not comply with the contractual terms or delivery delays exceed the established deadline, buyers have the right to request the termination of the contract and the reimbursement of the amounts paid, together with damages. In addition, if the sale of the future good is made before the project is completed and the buyer suffers losses due to the delay, the courts can oblige the developer to pay compensation.

**2. Spain: Regulation of sales of future goods.** In Spain, the sale of future goods, especially in the real estate sector, is regulated by Law 57/1968, regarding the protection of payments made by buyers in contracts for the sale of properties under construction. According to this regulation, real estate developers are required to conclude transparent contracts with buyers and to assume responsibility for completing the works on time.

If the developer does not fulfill the contractual terms, buyers can request the guarantee of payments made up to that point, through a bank guarantee or insurance that protects the amounts paid by the buyer. This is a common practice in Spain, which allows for the protection of consumers against the risks associated with delays in the delivery of properties or even the developer's bankruptcy.

**3. Germany: Sale of future goods in the context of strict regulations.** In Germany, sales of future goods are regulated by the German Civil Code (Bürgerliches Gesetzbuch, BGB), and the essential principles are similar to those in France and Spain. In Germany, it is important to note that German law provides for a termination clause if the developer does not comply with the property's delivery deadline. Thus, consumers can request the termination of the contract and the reimbursement of the amounts paid in advance, together with compensation.

German jurisprudence is extremely detailed and protects consumers by imposing very strict rules for developers. For example, German courts have ruled that if the seller cannot demonstrate that the property will be completed according to the

specifications and contractual terms, then he can be obliged to pay compensation to buyers for the damages suffered due to delays.

**4. Italy: Regulation of the sale of future goods in the real estate sector.** In Italy, sales of future goods are regulated by the Italian Civil Code, and in the real estate sector, real estate developers must comply with strict rules to protect buyers. Similar to the regulations in other European countries, developers are required to provide detailed information about the progress of the works and to include protection clauses for buyers in contracts. If the developer does not complete the property within the established deadline, the buyer can request compensation.

In Italy, practice shows that bank guarantees are frequently used to ensure the developer's payment of the amounts owed to buyers in case of delays. In addition, if the developer goes bankrupt, Italian law provides for the protection of buyers by returning the amounts paid or by completing the construction by another developer.

**5. Common regulations in the European Union.** At the European level, there are regulations that protect consumer rights, especially in the context of sales of future goods. Starting with Directive 2011/83/EU on consumer rights, the European Union has introduced rules that protect property buyers, establishing the obligation for developers to provide clear and detailed information about the properties to be built, as well as delivery deadlines and payment conditions.

Also, Directive 2014/17/EU on consumer credit, which regulates credit contracts for the purchase of a property, was adopted to protect property buyers, including in cases where the good sold is a future good. This directive requires developers to ensure that buyers are informed about all costs and risks involved in the real estate transaction.

In conclusion, European practices in the field of selling future goods reflect a general trend of protecting buyers and ensuring transparency in the sales process. Clear regulations, financial guarantees, and rules that require developers to comply with contractual terms are essential for ensuring a balance between developers and consumers, protecting the latter against the risks associated with delays in the delivery of properties or other irregularities.

## **9. Proposals *de lege ferenda* regarding the sale of future constructions**

In Romania, the legislation regarding the sale of future goods, especially in the real estate sector, can be improved to provide greater protection to consumers and to encourage the development of a more stable and transparent real estate sector. Although current regulations cover essential aspects of real estate transactions, there are still challenges that can be addressed through legislative changes and the adoption of additional measures to prevent risks and ensure buyers' rights.

Here are some suggestions for improving the legislation regarding the sale of future goods in Romania:

**1. Clarification of regulations regarding the sale of future goods.** Currently, Romanian legislation regarding the sale of future goods is mainly regulated by the Civil Code, but in certain situations, ambiguities may arise in the interpretation of regulations, especially regarding contracts for the sale of unfinished or under-construction properties. For example, there are cases where developers may delay the delivery of a property or fail to fulfill certain contractual clauses. In this regard, it

would be useful for the legislation to more clearly establish the procedures for guaranteeing the completion of constructions, the exact deadline for property delivery, and possible sanctions for non-compliance with deadlines.

Adoption of additional norms within the Civil Code that clearly specify the steps that developers must follow when selling future goods (such as the delivery deadline, conditions for guaranteeing the completion of works, and mechanisms for protecting buyers in case of developer bankruptcy).

**2. Introduction of financial protection mechanisms for buyers.** One of the biggest risks for buyers in the case of selling future goods is the uncertainty related to the completion of the real estate project and the observance of delivery deadlines. If the developer encounters financial difficulties, this can lead to major delays or even the impossibility of completing the works.

One of the most effective legislative measures would be to oblige real estate developers to establish a financial guarantee or a reserve fund (through an escrow account or an insurance policy) for each real estate project. These funds should be available if the developer does not complete the project within the established deadline. Thus, consumers would have the guarantee that, in case of bankruptcy or non-completion of the project, they will be able to recover part of the amounts paid.

**3. Strict regulation and control of advance payments.** The law should strictly regulate the amounts paid by buyers upon the conclusion of sales contracts, to avoid situations where developers receive significant amounts before actually starting the works. For example, the price should be paid in stages, the amounts paid by the buyer before the completion of the construction should not exceed a certain amount of the total price of the property and should be linked to the stages of progress of the construction.

**4. Transparency in publishing information about projects and sales.** Another important aspect is the transparency of information provided to buyers before signing a contract. Currently, developers must provide information about the progress of the works and the delivery deadline of the property, but this information is not always clear and complete.

Creation of a public register of real estate projects under construction, accessible online, which contains detailed information about projects (construction plans, delivery deadlines, approvals, authorizations) and about developers. This register should be regulated by the competent authorities and include periodic updates, to ensure better information for buyers before making a purchase decision. Also, legislative measures should be implemented that require periodic monitoring of the progress of the real estate project by local authorities or an independent entity, to verify whether the construction works are carried out according to the plan. In parallel, developers should be required to present financial evidence regarding the use of funds obtained from buyers and additional funding sources (loans, investments, etc.).

**5. More detailed regulation of termination and compensation clauses.** In many contracts for the sale of future goods, there is no detailed regulation of clauses that protect the buyer in case of delivery delays or non-compliance with contractual terms. Also, there are no clear procedures for terminating the contract and recovering the amounts paid in case the developer fails to fulfill his obligations.

Improvement of regulations regarding termination and compensation clauses for buyers in case of delays or non-compliance with deadlines, as well as clarification

of the procedures by which buyers can request the return of amounts paid and damages for unjustified delays.

**6. Training and certification of real estate developers.** Another important measure would be the introduction of a professional certification system for real estate developers, which establishes minimum standards of competence and ethics for them. This system could contribute to increasing buyer confidence and protecting them against possible fraud.

Creation of a licensing and certification system for real estate developers, with the obligation for them to demonstrate that they meet the legal and professional requirements, so that buyers can have a greater degree of confidence in them.

**Conclusion:** The legislation in Romania regarding the sale of future goods can be significantly improved by more detailed regulation of the sales process, creating financial protection mechanisms for consumers, increasing transparency, and ensuring clear delivery deadlines. These measures would contribute to strengthening consumer confidence in the real estate market, reducing risks, and promoting a more transparent and safer real estate market for all actors involved.

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