RECOGNITION OF SIGNATURES IN THE PROMISSORY CONTRACT FOR THE PURCHASE AND SALE OF REAL ESTATE, SIGNED BETWEEN TWO PARTIES

One of the most characteristic contracts in real estate law is the Promissory Contract for the Purchase and Sale of real estate, which assumes special relevance when the parties reach an agreement on the conditions for the sale of the property in question.

This contract aims to define conditions and specificities of the business, such as, in particular, the price, the asset in question, the relevant deadlines, guarantees and the delivery of the keys (traditio rei).

In the case of a promise to buy and sell of a real estate asset, the law is clear with regard to its underlying requirements, particularly with regard to the form to be adopted, which means that the promissory contract will only be valid if is duly signed by both binding parties and with their respective signatures recognized.

With regard to the signatures affixed to the document, article 410 of the Portuguese Civil Code, which succeeded the famous "Seabra Code" and which came into force on June 1, 1967, and whose prediction, in question, appears then in 1980, it states in its number 3, the following:
"(...) 3 - In the case of a promise regarding the conclusion of an onerous contract for the transfer or constitution of real rights over a building, or autonomous fraction thereof, already built, under construction or to be built, the document referred to in the previous paragraph must contain the in-person recognition of the signatures of the promisor or promisors and the certification, by the entity that carries out that

recognition, of the existence of the respective use or construction license; however, the contracting party who promises to transmit or establish the right can only invoke the omission of these requirements when it was negligently caused by the other party. (...)"

Now, it is clear that the legislator intended to guarantee, with a very high degree of unequivocality: 1) The identity and powers of the signatories and 2) The existence of documentation essential to the completion of the final transaction.

One of the objectives of this rule is to prevent a property that does not have a license from being the object of the deal without the knowledge of the prospective buyer, or to prevent so-called "clandestine construction".

The lack of this recognition of signatures entails legal consequences, in this case in the form of invalidity (mixed nullity), however, this may be remedied later by obtaining, for example, a construction or housing license.

In these terms, the jurisprudence is unanimous, with regard to article 410, no. 3, of the Civil Code, which:
"(...) establishes a norm of an imperative nature that aims to protect, in particular, the position of the prosmising buyer, taking into account the order of magnitude of the paroperty interests involved, requiring in-person recognition of signatures (duly authenticated) in the text that formalizes the promise contract as a form of awareness and conscious, due to its solemnity, of the importance of the act and the subscriber's duty to pay attention, with all seriousness and rigor, in all the clauses to which he is thus bound (and which in The overwhelming majority of cases are (pre)prepared and proposed by the promising seller)".

Oftentimes, in practical life, it is common for the parties to question the possibility of introducing a clause excluding that assumption and which would prevent them from subsequently claiming the nullity of the contract. However, it is important to check the validity (and consequences) of this type of clause.

Now, according to the same jurisprudence, mentioned above:
"(...) since the segment of the norm in question is imperative in nature and of public interest, there is no value in including in the text of the promise contract a clause, allegedly consensual, that is proposed to produce the contradictory practical effect of making non-obligatory a formality that the law expressly imposes. IV - The statement, in the same clause, that such an invocation of nullity will automatically constitute conduct that qualifies as an abuse of rights is completely unreasonable, insofar as such a legal figure, with a generic provision, depends absolutely and decisively on the concrete and case-by-case analysis of all the particularities of the conduct of each of the contracting parties, not being generalizable, in an abstract way, based on the blind operation of any contractual clause. V – Therefore, under the terms of article 220 of the

Civil Code, the contractual clause of a promissory contract that stipulates the waiver of any of the promisors to invoke the nullity provided for in article 410, no. 3, of the Civil Code, is null and void. (...)"

However, an abuse of rights is considered a case in which the parties do without the aforementioned formality (recognition of signatures), but accept the conditions of the deal, never having argued the validity of the contract over the months that followed its signature and only doing so because it suits them for a certain reason.

Finally, it is important to clarify that, despite the legislative introductions resulting from the new legislative package, called SIMPLEX, with regard to urban planning and in particular, the elimination of the obligation to present authorization for use in acts of transfer of ownership of urban buildings, the aforementioned paragraph 3 of article 410 of the Civil Code remains in force, under the same terms, and no adaptation or exclusion has been foreseen.

Therefore, the use or construction license must still be presented to recognize signatures on a promissory contract for the purchase and sale of a property.

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