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**THE RESOLUTION OF THE BUY AND SELL AGREEMENT CONTRACT BY
NONPAYMENT**

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With the increment and evolution of the construction in the last decade, the promoter enterprises, real estate brokers and enterprises owner of projects, have needed to give materiality to the relation which they creates with the possible buyers of the departmental unity or habitable edifications through the called buy and sell agreement contract of a personal property; all the before mentioned with an intention farther of the transactional type, because this juridical act formalizes the relationship between client and promoter, but at the same time, promoters fulfill with the requirements of the financial and credit entities, whom establish the obligatory whence a part of the project is obligated to disbursement of the credit line or loan which they will grant to the construction's owner or constructor.

Due to these events, appear the precontracts, they only grant personal rights to the promissor buyer, because his expectations are that at the ending of certain event, condition or term will celebrate the definitive Buy-Sell Agreement of personal property, if there was acceptance in the thing and in the price according to the article 1221 of the Civil Code. If this has occurred and the promise validity requirements are fulfilled, the promissor buyer will have rights to claim the fulfillment of the promise. Nevertheless, we are before a promise, the contract acquires all the requirements of a sales contract; for this reason, some clients equivocally consider that the celebration of this act gives them real rights. This, due to before to celebrate the sales contract, the buyer part complied with the asked payment, within the term agreed, to deliver the definitive payment promise letter, the maintenance initial quota, and the payment of increased materials cost, whence it is evident he believes that he has rights above the thing.

The celebration of this category of contracts sums favorable apparently for the promissor seller when it is a reality that its legality was submitted to tribunal's close examination referring to some abusive clauses, demanded of nullification. But maybe one of the most important clauses in these polemical contracts is the clause which contemplates the contract resolution by breach of some obligations of the promissor buyer, specifically, the part of failure to pay concerns, joined to the execution of the penal clause stipulated in these juridical acts, which in essence, the result is the debtor loses part of his payments, many times without import that the application of it results onerous.

The Civil Code, recently object of an important reform, seems to be a restraint for the call of full resolution of contracts rights when is alleged execution or imperfect contractual performance. We are referring to the Article 1275 of the Civil Code, according to its modification contains on the Law 60 of 2008, which expressly disposes that the real property sell, nevertheless when it was stipulated that failure of pay in the agreed price, gives place to the rescission of contract, the buyer can pay after the term expired, if in the interim, the debtor has not been judicially required for the payment. It is probably that due to some clients' ignorance referring contractual matter, they do not enforce their rights in



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an effective manner, in order to maintain the efficacy of the legal relationship, though he receives a note from the promissor seller where he informs the contract is going to be rescinded for failure of pay in the established term, it can be fulfill before the own seller or by means of consignment payment in the presence of a tribunal.

This norm, in our opinion, results applicable to the buy-sell agreement, however, it seems to refer to the purchase agreement; for this reason, we believe that the invoked norm should say that in the contracts referring to real property, does not fit the resolution of the same full right if the payment has not been demanded by judicial way.

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