BILATERAL PROMISE OF SALE-PURCHASE. LIMITATION OF THE RIGHT TO REQUEST THE ISSUANCE OF A JUDGMENT THAT TAKES THE PLACE OF AN AUTHENTIC DEED. THE MOMENT FROM WHICH THE LIMITATION PERIOD BEGINS TO RUN

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ABSTRACT

The solution of the Brașov court commented in these pages deviates from the letter of the law, but it achieves a fair adaptation of the limitation regime to the particularities of the execution of contractual obligations. The interpretation given by the court violates the scope of application of art. 1669 paragraph (2) of the Civil Code and is therefore questionable in terms of formal legality, but, in light of the general principles of fairness and good faith, such a solution deserves to be supported, as it avoids sanctioning the creditor for the debtor's culpable inaction.

KEYWORDS: *promise to sell; real estate; land register; court decision that takes the place of a contract; limitation;*

By the lawsuit (...), the plaintiff (...) requested the court to force [the defendant] to conclude a sale-purchase contract in authentic form, suitable for registration in the land register, through which ownership over the real estate subject of the bilateral sale-purchase promise authenticated under no. 361/05.04.2021, concluded at the notarial office (...), real estate represented by a residential house, will be transferred to him (...), otherwise the decision that will be pronounced to take the place of an authentic sale-purchase contract, suitable for registration in the land register; the registration in the land register of his ownership over the real estate identified above, as well as to force the defendant to pay late payment penalties in the amount of

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0.01% of the real estate price, for each day of delay starting with 01.06.2022 and until the date of conclusion of the sale contract in authentic form, with the obligation of the defendant to pay court costs.

In the justification of the application, he indicated that, as a promissory buyer, he concluded with the defendant, as a promissory seller, a bilateral promise of sale-purchase, under which the defendant undertook to transfer the ownership over the previously described real estate. According to art. IV of the preliminary contract, the transfer of ownership was to be carried out by signing the authentic deed no later than 01.06.2022, the defendant assuming the obligation to prior register in the land register the real estate, an obligation that was only carried out on 26.01.2023. (...) After the registration of the real estate, the plaintiff notified the defendant in order to sign the authentic contract, by notification no. 1/30.05.2024, requesting him to appear before the public notary on 10.06.2024. The defendant did not appear, citing the unavailability of its representative, but did not indicate an alternative date. The plaintiff sent a new notification on 11.06.2024, by registered letter, scheduling the meeting for 26.06.2024, but the defendant did not appear at the notary on this date either. Subsequently, by notification no. 1065/11.06.2024 (...), the defendant informed the plaintiff that he no longer wished to conclude the sale contract at the price stipulated in the promise, requesting its renegotiation. The plaintiff claimed that this request is extra-contractual, unjustified, lacking legal and contractual basis, since the sale price had already been established and paid in full by him on the date of conclusion of the preliminary contract, namely the amount of 86,000 euros, the equivalent in lei of the amount of 422,784.60 lei, paid by payment order from the daughter's account, as shown in the attached documents.

In support of his claims, the plaintiff invoked the provisions of Article III of the preliminary contract, which establishes the fixed and intangible nature of the price, as well as Article IX of the same act, according to which any modification of the promise can only be made by an additional act signed by both parties. The plaintiff indicated that no such additional act was concluded. The plaintiff further indicated that the defendant unreasonably delayed his contractual obligations, including the tabulation (...), although the deadline for concluding the contract was 01.06.2022. This delay is attributable exclusively to the defendant.

Moreover, in an attempt to force the plaintiff to accept a higher price, the defendant resorted to abusive measures, consisting in the cessation of the supply of utilities in the building occupied by the plaintiff and his family,

namely electricity and water. The plaintiff invoked the provisions of art. 1166, 1170, 1266, 1270, 1279, 1530, 1531, 1536 and 1669 of the Civil Code, showing that the promissory buyer has fully fulfilled his obligations, while the defendant unjustifiably refuses to complete the sale. He emphasized that the preliminary contract is a bilateral legal act, generating mutual obligations, and, in the event of an unjustified refusal, the party that has fulfilled its obligations has the right to request the court to issue a decision that will take the place of an authentic contract, under the conditions of art. 1669 para. (1) Civil Code.

(...)

On 09.12.2024, the defendant filed a response to the summons and a counterclaim by which he invoked the exception of the limitation of the substantive right to action, and through the counterclaim he requested the rejection of the summons as unfounded, requesting the termination of the bilateral promise of sale-purchase (...), as a result of fulfilling the conditions provided for in art. 1271 para. (2) letter b) of the Civil Code, and in the alternative, obliging the plaintiff to pay the amount of 8310 lei, according to the invoice (...) issued on 11.04.2022.

Analyzing the documents and works of the file, with respect to the provisions of art. 248 of the Civil Procedure Code, with priority regarding the exception of the limitation of the substantive right to action, invoked by the response, the court notes the following:

About the exception to the limitation of the substantive right to action regarding the petition having as its object the issuance of a decision that will take the place of an authentic act, the court notes that in Art. VII of the bilateral promise of sale-purchase (...) having as its object the residential house and the related land, the parties agreed to conclude the sale-purchase contract no later than 01.06.2022.

The court notes that, according to art. 1669 paragraph (2) of the Civil Code, the right to action is limited in 6 months from the date on which the contract should have been concluded, and, according to art. 2523 of the Civil Code, the limitation begins to run from the date when the holder of the right to action knew or, according to the circumstances, should have known of its birth.

Thus, the court notes that, from the terms used by the parties when drafting the contractual clauses, results that, by the date on which the defendant's obligation to transfer the ownership in authentic form had to be fulfilled, the other obligations imposed by the contract had to be fulfilled as

well, namely the registration of the property in the land register or the obligations imposed by law, namely the presentation of the tax attestation certificate and the energy performance certificate.

According to art. 1676 of the Civil Code, "in the matter of sale of real estate, the transfer of ownership from the seller to the buyer is subject to the provisions of the land register", and according to art. 1658 paragraph (1) of the Civil Code, "if the object of the sale is a future asset, the buyer acquires the ownership at the moment when the asset is realized. With regard to buildings, the corresponding provisions of the land register are applicable".

According to the provisions of art. 37 paragraph (1) of Law no. 7/1996, "the ownership over the buildings is registered in the land register based on an attestation certificate issued by the local authority that issued the building permit, which confirms that the construction of the building was carried out in accordance with the building permit and that there is a receipt report upon completion of the works, as well as the other legal provisions in the matter and a cadastral documentation", and the provisions of art. 159 paragraph (5) of Law no. 207/2015 on the Fiscal Procedure Code establish the obligation to present, in the event of the alienation of the ownership over buildings, the fiscal attestation certificate attesting the payment of all payment obligations due to the local budget of the administrative-territorial unit within whose radius the property is fiscally registered, the consequence of concluding the deed in violation of these provisions being provided for in art. 159 paragraph (6) of Law no. 207/2015 on the Fiscal Procedure Code, according to which "the acts by which buildings, land, or means of transport are alienated, in violation of the provisions of paragraph (5), are null and void".

As the lack of these documents prevents the conclusion of the sale-purchase deed in authentic form, failure to meet these requirements within the procedure provided for by art. 1669 paragraph (1) of the Civil Code can only lead to the rejection of the application, the aforementioned provisions requiring that all conditions of validity be met.

In the same sense are the provisions of art. 57 of Government Emergency Ordinance no. 80/2013, according to which "(1) In the case of applications requesting the issuance of a decision that takes the place of an authentic act of alienation of real estate, the court will request an extract from the land register for real estate that has an open land register or a certificate of encumbrances for real estate that does not have an open land register, a tax certificate issued by the specialized department of the local public

administration authority and proof of up-to-date debits of the contribution quotas to the expenses of the owners' association".

(...) the court notes that, according to art. I of the bilateral promise, the defendant obliged himself to register the building in the land register, in the name of the company. Thus, given that this obligation was a preliminary obligation to the conclusion of the sale deed, the court notes that there is a postponement of the beginning of the limitation period, within the meaning of art. 2523 Civil Code, the birth of the right being conditioned by other preliminary obligations, starting from the way in which the parties agreed by pre-contract, there being a close connection between the completion of the construction, the registration of the residential building and the delivery of a decision by which the defendant is obliged to conclude the sale-purchase contract.

As a result, given that the property was not registered in the land register, the court could not issue a decision that would take the place of a contract according to the procedure provided for in art. 1669 paragraph (1) of the Civil Code. Under these conditions, the limitation cannot be invoked against the creditor of the obligation to complete the sale-purchase contract in authentic form, because the previous operations, assumed by the defendant, are the completion of the building and its registration (...).

In this regard, the court will reject the exception of the limitation of the claim for the issuance of a decision that will take the place of an authentic deed, invoked by the defendant, as unfounded. (...)

(Brașov Tribunal, 1st civil section, sentence no. 283 of July 11th, 2025, available at www.rejust.ro, accessed on November 11th, 2025, ***with Note by M. Tăbăraș and A.-A. Moise****)*

NOTE

1. The factual situation

The decision reproduced in the excerpt raises several interesting legal issues, but for the present judicial practice note we are only interested in the issue of limitation.

In this case, the Brașov Tribunal was called upon to rule on the request made by the promisor-buyer, based on art. 1669 paragraph (1) of the Civil