

Note on the potential criminal, civil and commercial implications of the actions of Marina Gammarth management

Société Immobilière et Touristique Marina Gammarth, hereafter SITMG, the developer of "La Baie de Gammarth" project consisting of an integrated project made of a leisure port, recreation areas and a residential development may have committed three sorts of offenses:

A -Criminal issues:

SITMG has built a residential real estate on land extended by government at a subsidized price only for developing a touristic project consisting of a leisure port and a recreation area (Agreement Nr. 8190 herewith attached does not mention residential real estate). Residential developments do not benefit from subsidies.

The touristic part of La Baie de Gammarth now extends over only two (2) hectares and is eligible to a subsidized price (currently on average at the ridiculous amount of TND 41/sqm) but on the balance i.e. 19 hectares initially meant for touristic development a residential real estate has been built. Land for residential real estate in the area sells between TND 5.000 and 6.000 TND/sqm for small parcels and between TND 1.500 and 2.500 for larger parcels, compared to the ridiculous TND41/sqm paid for the misappropriated land.

Offense 1:

No the managers of SITMG are not heroes nor smart developers, and they are not successful genuine promoters and businessmen, they just booked the profits misappropriating the difference between the commercial price of the land (which should be owed to the State of Tunisia) and the subsidized price which is illegitimate in case of residential development

Since 2012, the Court of Tunis has initiated a case and is conducting all sorts of valuations to assess how much SITMG owes to the State of Tunisia and who is responsible for the situation.

Offense 2:

Since year 2013 SITMG has produced false financial accounts and distributed dividends derived from virtual profits each year as:

- It did not take provisions on the potential land price correction which the State may further impose, although at the time of approval of the accounts the management knew of a case introduced by the government since 2012 in front of the Financial Judicial Pole of Tunis (Court) under number 83775 and proceeded with distribution of what was due to be provisions, as profit.

- It did not take any provision for the court cases and claims filed by the acquirers of the residential development. These provisions too have been distributed as profits. There are more than 25 court cases for damages incurred, for workmanship and for penalties of all sorts and most of the remaining acquirers intend to file to start their court cases too.
- The management may have acted in a criminal manner by hiding all these cases to the auditors and the shareholders to make them approve the accounts and decide to distribute virtual profits

B - Commercial issues:

1. The port

To obtain the agreement to realize the Project (Agreement Nr. 8190 (and 8168) delivered in May 2007 for only a port and a recreational area: copy attached) SITMG has represented to the government that it will raise TND 46.6 million in bank financing for the port.

In 2009 however, after SITMG failed to raise the agreed upon bank financing, SITMG has started selling the whole project under the legal regime of a co-ownership (co-propriété), incorporating the cost of the port in the price of housing. It has in counterpart promised that the Syndicate of the Co-owners to co-owners will have the upper hand on the port and as in any co-ownership it has represented that the co-owners will enjoy the benefits of the common areas including the port.

Therefore the co-owners are the ones who financed the port.

In 2015 the managers of SITMG realized that the port cannot be of private ownership and the managers bowed to the government arguments and took advantage of the opportunity to obtain for SITMG only the right to manage the port and denied the co-owners' right of use applying to them the same mooring prices as any third party and discriminating them according to its mood, as a few were denied mooring and had to resort to Court. (They now won in court).

SITMG obtained for itself an exceptional temporary agreement to manage the port while the government was delimiting legally the port.

After delimitation of the port, SITMG returned to the government some valuable land paid by the co-owners and attempted to create an ad'hoc company, of name PMG, to manage the port, a company in which only Groupe Milad was due to be shareholder.

The co-owners objected to that, raised a flag with the government and failed SITMG managers move to take over the port for themselves.

The government did not renew to-date the management agreement for SITMG and SITMG misappropriation went farther as follows:

- It misappropriated the rights over the port claiming it had financed it, needed to be paid back and ignored the co-owners

- It applied the same mooring prices to the co-owners who have financed the port as to any third party and has denied them their documented right of use
- since 24 August 2017 end date of the exceptional temporary management agreement, it continued managing the port illegally, increasing mooring prices, abusing co-owners' rights and co-owners' common areas and attempting to take back for itself all services available on site such as the gas station, the shipyard, the yacht-club, etc
- it has not properly insured the operating equipment of the port and not complied with regulations to the extent its harbor dredge has been seized by the authorities and it is under investigation by the environment ministry
- etc.

As a result, SITMG is subject to many complaints either in front of government institutions or in court.

2. The recreation area

Co-owners have bought in Marina Gammarth on the basis of an integrated project fitted with all kind of operating services, shops, restaurants, etc..

None have open. Co-owners are considering claims for damages

3. Residential

The law for residential development in Tunisia is very clear. Once the co-owner has paid the full price, no later than thirty (30) days after full payment the developer has to submit the provide the acquirers with their purchase contract.

Now seven (7) years have passed and SITMG is unable to provide co-owners with their contracts, jeopardizing their life, their succession, etc...

SITMG will be subject to hundreds of claims for damages.

C - Punishable conflict of interest issues:

1. House of Manager

While the project was due to complete legally by 31 May 2013 (legal requirement by AFT, the land provider, copy attached), the manager started building his own house (a palace) end of 2016 infringing all sorts of ethic, governance, ..rules and provisions:

- his house does not comply with the spirit of the project in terms of size, content, quality and architecture
- price paid for the house is underestimated by almost TND 10 million to the detriment of other shareholders, the State of Tunisia and the tax regimes

twice (misappropriation of approx. TND 3 million of income tax and of about TND 1 million of registration tax).

- land taken for himself is different from initial map, and different from land described in his own pre-sale contract by almost 1'000/sqm in his favor at the detriment of the common areas
- his land infringes on the maritime public domain

2. House sold to acquires connected to shareholders

- sale price is believed underestimated for the 8 houses by approx. 10 million TND with all consequences to other shareholders and Tunisian tax regimes
- a portion of the beach which is maritime public domain has been integrated to these houses, depriving co-owners and the public from enjoying a decent beach.