

**JUNTA DE COMPENSACION DEL POLIGONO 1 DEL
SECTOR R-3, CORTIJO CABRERA, TURRE**

Sr. Presidente. D. Segundo Ramirez Pérez

Turre, the 20th of January, 2023

Dear Mr. Ramirez,

As members of the "CORTIJO CABRERA HOMEOWNERS ASSOCIATION (POL. 1, SECTOR R-3, "CORTIJO CABRERA", DE TURRE)", an administrative association duly registered in the Andalusian Registry of Associations, No. 7.494, established with the aim of defending the rights and interests of the associated homeowners in all matters concerning the urban development of the aforementioned area, the maintenance of the urbanization works already carried out and the provision of services in said area, we address this to you in order to make certain clarifications with regards to the considerations expressed in the letter from the Presidency of the Compensation Board dated November 28, 2023, while, in exercise of our legitimate rights, we are interested in being provided with the information and documentation related in the last section of this letter.

I.- Regarding Sentence 2822/2023, of October 19, of the Administrative Litigation Chamber of the TSJ of Andalusia.

Firstly, we consider it appropriate to qualify **the scope that your letter of November 28 attributes to the recent Sentence 2822/2023, of October 19, of the Administrative Litigation Chamber of the TSJ of Andalusia**, upholding the appeal filed by the Compensation Board against the Judgment 297/2020, of November 23, of the Administrative Litigation Court No. 2 of Almería which, upholding the appeal filed against the full agreement of the Turre City Council December 19, 2016, which rejected the initiation of an ex officio review file for the declaration of full nullity of the Agreement adopted by the General Assembly of the Board on January 14, 1993, to revoke the aforementioned full municipal agreement, and invalidating the agreement of the General Assembly of the Board.

In reality, Sentence 2822/2023, of October 19, of the Administrative Litigation Chamber of the TSJ of Andalusia, has been based on two issues of a purely procedural nature. The fact is that, the claim made and, consequently, the Judgment appealed, is based on the fact that the Agreement of the General Assembly of the Board of January 14, 1993 should be invalidated because it was a modification of the Statutes of the JDC having been adopted without regard for the legal procedure required for this purpose. The Judgment of the TSJ of Andalusia highlights however:

- a) That given the regulatory nature of the Statutes, individuals do not have the ability to directly request their review ex officio (i.e. in the Courts);

b) That, in reality, the agreement of the General Assembly of the Board did not entail a modification of the Statutes, so the legally established procedure for such modification did not have to be followed.

In short, Sentence 2822/2023, of October 19, of the Administrative Litigation Chamber of the TSJ of Andalusia, has not ruled on the substance of the Agreement of the General Assembly of the Junta of January 14, 1993, highlighting that it could be challenge in the General Assembly and, and in the event that their challenge were to be rejected, an appeal could be filed with the Town Hall. This would be in the appropriate channel, according to the Sentence.

II.- On the scope of the Agreement of the General Assembly of January 14, 1993.

Having clarified the above, it is necessary to address the repeated references that the President's letter of November 28, 2023 makes regarding the full effectiveness of the **General Assembly Agreement of January 14, 1993**; In this agreement, as the aforementioned letter points out, it was agreed "that the expenses to develop the urbanization correspond to the developer (Urbanización Cortijo Cabrera, S.L.), while the maintenance and service expenses correspond to the homeowners."

The fact is that, on the one hand, it is not lawful for the developers of the Development Plan ("Plan Parcial"), who currently control and chair the Compensation Board as majority owners of the plots resulting from the Compensation Project, to invoke full effectiveness of an agreement that, since January 14, 1993, exempts them from their legal duty to contribute to the maintenance and conservation of the urbanization works carried out in Polígono 1, which have not yet been received and are absolutely obsolete, when these same developers have clearly and manifestly been failing to comply and with the reciprocal obligation to execute the development works of the aforementioned Polígono, acquired by them in the very same agreement of 1993. In this sense we remind you that the deadlines for execution of the urbanization works of Sector R-3 provided for in the Development Plan, definitively approved on November 24, 1988 (three consecutive stages of 4, 3 and 1 year), as well as the Urbanization Project of Polígono 1 (24 months), approved on November 30, 2000, have been exceeded by over two decades, which allows us to invoke a basic principle of our law: the validity and compliance of agreements cannot be left to the discretion of one of the parties (art. 1256 of the Civil Code). Please note that this flagrant breach of the obligations acquired by the developers of the Development Plan, motivated the Town Hall to initiate internal actions in 2016 which, having declared the JDC to be in breach of its duty to urbanize, agreed to change the prevailing system from "compensation" to "cooperation"; However, despite the clear and notorious breach of their responsibilities, which persist to this day, it was decided that the change not be implemented by the Town Hall solely because, as stated in the report issued by the Municipal Secretary and Treasurer-Comptroller dated February 24, 2016, they lacked the material and human means and financial resources to take over the management of the area by way of a "cooperation" system. On the other hand, and in addition to the above, it must be noted that, subsequent to the adoption of the agreement of the General Assembly of January 14, 1993, several documents that distribute the benefits and burdens have been approved by the Compensation Board of Pol.

1 Sector R-3 and by the Town Hall (Compensation Project, definitively approved by plenary agreement dated August 17, 1994, BOP No. 167, dated September 2, 1994; “Annex of rectification due to omission” of the aforementioned Project, approved by plenary agreement of March 28, 1996; and document of Complementary Legal Operations to said Compensation Project, approved by plenary agreement of March 26, 1998). These subsequent equidistribution documents are those that, by application of the principle of chronology or temporality (art. 2.2 of the Civil Code and normative hierarchy 8art. 9.3 Constitution), have come to establish the definitive legal framework for the recognition of rights and contribution to urban planning charges by the members of the Compensation Board, by determining which plots are exempt from charges (among which are included all those that were already built at the time of its approval) and those that must respond to charges (fixing their percentage share in the urbanization costs and the balance in the provisional liquidation account, art. 19 of Royal Decree 1093/1997), while not forgetting the peculiarities that must be recognized in the case of the latter, when it comes to plots built by the promoters of the Partial Plan, subsequent to the approval of said equidistribution documents, which have been conveyed to third-party purchasers in good faith and free of all charges.

III.- Determination of the applicable legal framework in terms of contribution to urbanization charges, maintenance and conservation of urbanization works already executed, and the service of drinking water supply.

The letter from the Presidency dated November 28, 2023 does not adequately differentiate the legal regime that is applicable to each, making a kind of “totum revolutum”. The application of the three concepts (contribution to the burdens of urbanization, maintenance and conservation of the urbanization works already carried out, and attention to the home drinking water supply service) must be duly differentiated.

On the one hand, and regarding the **contribution to urbanization expenses**, as has been indicated, the only legal framework is established by the document of Complementary Legal Operations to the Compensation Project for Pol. 1 of Sector R-3 , approved by plenary agreement of March 26, 1998, which establishes the plots that are responsible for said expenses and to what extent, taking into account the special circumstances that are applicable to the plots built by the developers subsequent to that date of approval of said equidistribution documents, that those plots that are in principle affected by the payment of said costs were conveyed to third-party purchasers who purchased in good faith and free of charges.

Secondly, and with regard to the **obligation to maintain the urbanization works carried out**, it is obvious that we must distinguish between the applicable legal framework of both before and after its reception by the Town Hall. As such, **until the Town Hall officially receives the urbanization works of Polígono I**, the responsibility for the maintenance and conservation expenses of all works lies with the Compensation Board since, until said reception, the maintenance and conservation costs are considered urbanization expenses (art. 98.1 LIST, art. 67 RGU and art. 39 of the Statutes, in relation to Base of Action 16 of the Board).

Once the urbanization works are received by the Turre Town Hall, the conservation and maintenance will have the responsibility of the owners in the area, through the appropriate Urban Conservation Entity, releasing the Town Hall from such obligation. However, if the execution of the urbanization works is planned in phases or stages, as one of them is received by the Town Hall, the owners of said phase or stages take on responsibility for the maintenance and conservation, releasing the remaining owners and the Board from such responsibility (as provided in section 1.2.8.d, of the Partial Plan, in relation to article 67 of the RGU).

Given that, of the 19 functional units into which the urbanization works of Polígono 1 of Sector R-3 have been divided, only functional unit No. 8 has been received, it is the Urban Conservation Entity of said Sector - not the Board, that should be addressing the owners of plots included in said functional unit, for the payment of the corresponding maintenance and conservation costs. The problem for this lies in the fact that the following norms below have not been followed:

- a) The Urban Conservation Entity has not been duly constituted;
- b) Said constitution, as well as the corresponding Statutes, have not been approved by the TH;
- c) It has not been included in the Registry of Collaborating Urban Planning Entities (nor of its governing and administrative bodies);
- d) Consequently, the percentage of participation of the properties included in each functional unit in the conservation and maintenance expenses have not been calculated.

Finally, regarding the **supply of drinking water to the homes built in Polígono I, Sector R-3**, we must remind you that, if the developers in the Partial Plan had diligently complied with the obligation to urbanize acquired more than thirty years ago (which should have been fully complied with more than two decades ago), the drinking water supply and sewage networks should have been fully executed and received by the Town Hall, the latter being the one that should be providing, either by direct management or indirect (concession), the indicated drinking water and sewage services, as a minimum public service that must be provided by the Town Hall (art. 25 and 26 LBRL).

Notwithstanding the above, given the anomalous situation that necessitates that the unavoidable minimum public services be provided by the developers through the Compensation Board, the members of this Association are aware of the duty to pay for the costs of the supply of drinking water to their homes. However, logically, the contribution to said expenses, like any other, has to be made with due transparency and legal certainty, which is why, under the protection of the principles of transparency and access to public information, recognized in the art.105 of the Constitution and in Law 19/2013, of December 9, we request the information listed below related to this point. In any case, we consider it appropriate to specify that it is totally uncertain that, as indicated in the letter from the Presidency dated November 28, 2023, that arts. 59 to 63 and 66 of the RGU attribute to the Compensation Boards the supply of home drinking water service for the existing homes in the Sector, nor that such provision is part of the concepts that make up the urbanization costs to which the members of a Compensation

Board must respond (art. 122 LS/76, art. 155 RRLS/92, and 59 RGU), nor that, consequently, the latter can make a claim for collection of the costs of this irregular provision of the home drinking water service through the legally established mechanisms for the forced collection of urbanization costs (means of enforcement).

IV. Request for information and documentation.

In view of the above considerations, and under the protection of the right to information of our membership, as members of the Compensation Board of Pol. 1, Sector R-3, expressly recognized in art. 12 c) of its Statutes ("obtain information on the actions of the Board and its bodies"), we hereby request that you provide us with the documentation listed below:

- Copy of all work certifications issued in relation to the urbanization works carried out.
- Amount of urbanization expenses paid, specifying the amount respectively paid for the plots liable for the payment of said expenses.
- Copy of the guarantees provided to indemnify the Town Hall for the urbanization expenses attributable to the built plots
- Records of partial reception of the urbanization works carried out, if applicable, by the TH
- Reports, Accounts and Balance Sheets of the financial years that have elapsed since the establishment of the Board in 1991.
- List of the members of the Compensation Board, specifying their percentage quota for the purposes of exercising their political rights and explanation of methods for their determination.
- Explanation of the method of calculating costs be passed on to homeowners for the service of drinking water, specifying: a) concepts that make up the so-called service fee and calculation formula; b) concepts that make up the so-called consumption quota and calculation formula:

We await your comments and for you to provide us with the required documentation and information.

Sincerely,



David Levin

CORTIJO CABRERA HOMEOWNERS' ASSOCIATION, POL. 1, SECTOR R-3, "CORTIJO CABRERA", DE TURRE"