



**Evelina Gurtuskaya**  
Associate

## Disputes relating to additional Gross Floor Area

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### Introduction

The United Arab Emirates has witnessed a meteoric rise in urbanisation and architectural advancement. Amidst this backdrop, villa communities have emerged as symbols of opulence and luxury. However, as these communities flourish, a recurrent issue has surfaced relating to the concept of gross floor area ("GFA").

### The concept of Gross Floor Area

GFA refers to the total floor area contained within a building, measured to the external face of the external walls. It includes all covered spaces of a building, irrespective of the purpose or usability. Consider a lavish residential villa in Dubai's Jumeirah district. The villa's GFA would comprise the total of all the indoor spaces within the property: the spacious living rooms, bedrooms, the kitchen, bathrooms, the maid's room, corridors, and even the attached garage or storage rooms.

For developers, maximizing GFA is a cornerstone of project strategy. The guidelines and regulations related to GFA often originate from regulatory bodies. These bodies define the stipulations on how GFA should be calculated and applied, ensuring urban planning and architectural harmony. Developers, in response, adhere to these regulatory benchmarks during the design and construction phases, ensuring that their projects align with stipulated GFA limits.

Subsequently, when property buyers or owners purchase a home, they are, in essence, placing their trust in these regulations, believing that the property they purchase meets the promised GFA. As such, for them, GFA represents an essential measure of their investment's worth. When discrepancies arise between the allocated and utilised GFA, it often precipitates claims and disputes between the two sides.

### How is GFA different from BUA?

Unlike GFA, built-up area ("BUA") pertains typically to the total area of a property, inclusive of the built-up structures and sometimes any additional outdoor constructions like balconies, verandas, and covered terraces. It is imperative to acknowledge that different jurisdictions and regulatory authorities may favour one term over the other based on their regulatory focus, local conventions, or specific nuances in real estate measurement standards.

For instance, while the Dubai Development Authority might employ GFA as a reference point for certain zoning regulations or development controls, another authority, say in a different emirate or country, might utilize BUA for stipulating permissible construction limits or for taxation purposes. This divergence in terminological preference can often be attributed to historical practices, regional real estate norms, or the specific objectives of the governing regulations. It's therefore crucial for stakeholders—ranging from developers to buyers—to be conversant with these distinctions to ensure accurate interpretation and compliance. For example, a villa in Dubai Hills might have its selling price influenced by its GFA, accounting for all internal spaces, whereas a townhouse in a different region might be priced based on its BUA, taking into consideration its terraces and porch.

Whilst the two acronyms are often used interchangeably, in this article, we will delve into the disputes relating to additional GFA and their potential resolution in the context of the UAE's villa communities, aiming to offer a comprehensive perspective on the concept for developers, potential buyers, and homeowners alike.

### **Additional GFA from a Homeowner's Perspective**

Property owners often seek to make their space more personal, functional, or valuable. This can lead them to consider alterations such as enclosing a terrace, adding a room, or reconfiguring existing space, which can significantly boost the resale value of properties. Additionally, larger living spaces allow residents to accommodate their growing families, guests, or even house staff comfortably. An expanded floor area also offers homeowners the flexibility to customize their living spaces to include amenities such as home theatres, gyms, or expansive home offices – essential features in the modern luxury villa. Moreover, considering the UAE's warm climate, an increased indoor area provides more space for leisure and entertainment activities within the cool confines of one's home. From the perspective of many villa owners, some of these alterations, such as enclosing a terrace, aren't a monumental change. Enclosing a space doesn't necessarily alter the core use of the villa or imply it will accommodate a much larger number of people. On the other hand, while such changes might serve the homeowner's needs, they often result in a technical increase to the GFA.

**Additional GFA from a Developer's Perspective**

From a master developer's perspective, every residential project has a predefined GFA. This area allocation includes shared spaces, amenities, individual units, and other essential facilities. Thus, when a property owner makes alterations that increase the GFA of their villa, this effectively consumes a portion of the allocated GFA for the entire project. In turn, this limits the master developer's ability to sell, or develop, other parts of the property.

The loss of allocated GFA can have significant financial implications for developers. Developers invest in marketing, infrastructure, and amenities based on the originally planned GFA, and any reduction can result in financial setbacks, such as a reduction in the number of saleable or leasable units within the community, affecting revenue potential.

Beyond the commercial ramifications, there are also planning considerations associated with altering the GFA. Increased built-up space, for instance, frequently precipitates heightened vehicular movements. This surge demands robust and enhanced traffic management solutions to ensure seamless transit and safety. Moreover, any structural alteration, even if it appears minor, might necessitate modifications, or upgrades, to the existing infrastructure systems. There's also the question of sewage and waste management, as there is a direct correlation between expanded built-up areas and waste generation.

As a result, in order to accommodate planning considerations and financial commitments crucial to the success of residential projects, developers often seek contributions from villa owners. This practice is not unique but rather a common approach taken by local authorities across various jurisdictions, as they seek to ensure that any changes to the allocated GFA are adequately accounted for and supported financially.

In fact, it is common for developers and local authorities across various jurisdictions worldwide to levy charges on homeowners for property alterations. For instance, in England, homeowners who undertake modifications to their property are typically subject to various financial commitments, including planning permission fees and charges for building regulations approval. It is therefore of no surprise that developers often try to impose fees for alterations resulting in additional GFA.

**The Legal Position on Additional GFA**

From a legal standpoint, the developers' position is typically supported by both contract and law. Generally, Sale and Purchase Agreements ("SPAs") delineate the predetermined GFA and frequently include provisions stipulating that any modifications are contingent upon the master developer's consent. These agreements often tend to encompass umbrella clauses, compelling property owners to conform to all regulations instituted by the master community. In effect this means that, provided the master developer has established regulations that mandate homeowners to remunerate for modifications resulting in additional GFA, homeowners are under a legal duty to shoulder the costs for such alterations.

In the context of the UAE, this legal foundation is further solidified by restrictions on freehold title deeds, which usually denote that these titles remain bound by the rules and directives of the master community. Thus, the obligation borne by homeowners is both contractual and statutory in nature.

Challenges, however, emerge when the regulations or the SPA contain no, or ambiguous, provisions regarding the costs associated with subsequent alterations. Specifically, uncertainties arise when it comes to the valuation of additional GFA. Such lack of clarity is oftentimes a byproduct of developers' evolving commercial priorities, which precludes them from establishing a consistent valuation formula, detailing the valuation of additional GFA. Consequently, this vagueness paves the way for disputes, which can be avoided if sufficient due consideration is given to the matter at an early stage.

For those navigating this landscape - be it as a developer, a prospective villa purchaser, or a current villa owner - proactive measures can forestall potential complications and avoidable disputes. Prospective buyers and current owners anticipating alterations to their villas in the future should consider initiating dialogues with developers early on, exploring possibilities of price negotiations or securing prior approvals. Developers, on the other hand, can stave off disputes by ensuring that SPAs comprehensively address the matter of additional GFA, or by promulgating definitive regulations to address the matter.

Seeking timely legal advice can, therefore, be crucial in pre-empting and navigating potential claims and disputes associated with additional GFA. Should you have any questions, or require assistance with negotiations, ascertaining your legal position, or advice on an SPA and regulations, do get in touch with our team to arrange an initial informal discussion.