

# Federal Supreme Court Judgment 471 of 2021- The court's discretion to order the termination of a contract

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## Introduction

The right to terminate is both important and practical as it helps to ensure contracts are performed as agreed. While there are a number of provisions in the UAE Civil Code which govern the termination of contracts, this article will focus on the Federal Supreme Court's application of article 272 of the UAE Civil Code (in Cassation judgment No. 471 of 2021) in relation to a claim to terminate a sale and purchase agreement.

## Background

An individual entered into a sale and purchase agreement with a developer for the purchase of a villa in Sharjah. The developer did not deliver the villa by the agreed date. As a result, the individual filed a case before the Sharjah Court of First Instance to terminate the sale and purchase agreement and requested a refund of the amount paid as well as compensation for the delay. During the proceedings filed before the Court of First Instance, the developer issued a notice to the individual informing him that the villa's construction was complete and requested the individual to accept the handover of the villa. The individual did not accept receipt of the legal notice and continued with his legal proceedings.

## Sharjah Court of First Instance's Judgment

The Court of First Instance accepted the individual's claim and issued a judgment terminating the sale agreement. The court also ordered the developer to refund the individual and compensate him for the delay in delivering the villa.

## Sharjah Court of Appeal's First Judgment

The developer filed an appeal before the Sharjah Court of Appeal. The Court of Appeal upheld the decision of the Court of First Instance.

## Execution Court

The individual then successfully applied to the execution court to execute the judgment based on the decision of the Court of Appeal.

# Federal Supreme Court

In response to the Court of Appeal's decision, the developer filed a case before the Federal Supreme Court. The developer relied on article 272(2) of the UAE Civil Code (Federal Law No. 5 of 1985), which provides:

*“(2) The judge may order the obligor to perform the contract forthwith or may defer (performance) to a specified time, and he may also order that the contract be cancelled and compensation paid in any case if appropriate.”*

Moreover, the developer argued that the villa was complete and ready for handover during the Court of First Instance proceedings. The developer had submitted the completion certificate issued by the Sharjah Municipality in addition to the certificate from the consultant of the project which stated the villa was ready for handover. The developer also submitted a copy of the legal notice which it had issued to the individual and confirmed that the villa was ready for handover along with the no objection certificate that the water and electricity could be connected to the villa.

The Federal Supreme Court held that the Court of Appeal erred in deciding to terminate the sale agreement for delay in handover of the sold property considering that termination is not the default remedy for a breach of obligations, pursuant to Article 272(2) of the UAE Civil Code. The Court noted that the judge enjoys a discretion to order the obligor to perform his obligations or defer performance to a specific time.

Moreover, the court enjoys discretion to reject the request to terminate a contractor if the court considers that the obligor has not defaulted by fulfilling his obligation during the court proceedings, i.e., prior to the issuance of the judgment. This will be the case when the delay of performance does not negatively affect the claimant who has requested termination.

Thus, the Federal Supreme Court held in the present case that the Court of Appeal was not obliged to issue a judgment terminating the agreement as result the developer's delay in completing the villa.

The Federal Supreme Court found that the Court of Appeal's judgment did not address the arguments raised by the developer with regards to the villa being ready for handover, as evidenced by the documents submitted by the developer.

The Federal Supreme Court therefore overturned the Court of Appeal's judgment and referred the case back to the Court of Appeal for reconsideration.

## Sharjah Court of Appeal's Second Judgment

The Court of Appeal reconsidered the case and issued a judgment cancelling the judgment issued by the Court of First Instance and issuing a new judgment rejecting the case.

The developer later obtained a refund of the amounts paid in the execution proceeding.

## Conclusion

The judgment issued by the Federal Supreme Court highlights that under Article 272 of the UAE Civil Code; a breach of contract does not automatically entitle the aggrieved party to terminate the agreement. A court has the discretion to (1) oblige the debtor to perform his obligations, or (2) defer performance to a specific time, or (3) to terminate the agreement. Courts will tend to favour upholding agreements (provided they are valid and binding) and only order termination exceptionally. Moreover, a defaulting party may avoid termination if he is able fulfil his obligations either before or during the court proceedings

i.e., prior to a judgment being issued.