

Law 13 of 2008 Processes

April 2011

Summary

In an action initially filed before Dubai Court of First Instance, the Court of Cassation ultimately held that in accordance with Article 13 of Law No.13 of 2008 Regulating the Interim Real Estate Register in the Emirate of Dubai an action can be initiated before the Dubai Court against the developer or the broker, who has committed an act or omission constituting an offence under either Law No. 13 of 2008 or other legislation in force, prior to having recourse to RERA's General Director.

Claim

A property action was filed by the purchaser (the Claimant) against the developer (the First Defendant) and the Broker (the Second Defendant) (together the Defendants). The Claimant submitted that the Second Defendant (although not registered in the Brokers' register) offered him the opportunity to purchase several units owned by the First Defendant. As a result, the Claimant purchased several units in several projects (which were still under construction) and paid several installments to the First Defendant. The Claimant submitted that both Defendants failed to provide him with the booking form, schedule of payment or the SPA of any units purchased earlier. In light of this the Claimant requested the Court to direct both Defendants to pay him jointly the amount of AED 4,570,441.40.

The Court of First Instance

The Court of First Instance accepted the claim and ruled in favour of the Claimant. The SPA's concluded between parties were cancelled and the Defendants were ordered to pay jointly the Claimant the amount of AED 4,570,441.40. Consequently both Defendants appealed the judgment.

The Court of Appeal

The Court of Appeal overturned the Court of First Instance's decision and dismissed the case on the basis it had been initiated prematurely. Consequently, the Claimant appealed to the Court of Cassation.

The Court of Cassation

The Claimant argued that the court of Appeal had erred in its decision to dismiss the case based on premature filing. The Claimant further argued that the Dubai Land Department was the authority with competence to assess acts or omissions committed by the broker or the developer.

The Claimant submitted that his action was based on the fact that both Defendants received the amount of AED 4,570,441.40 from him without having concluded any contract; therefore, the Dubai Land Department had no connection to the matter.

Article 13 of Law 2008 prescribes as follows:

"When the Department finds that a developer or Broker has committed an act or omission that constitutes an offence under this Law or other legislation in force, the Director General shall prepare a report and refer the matter to the competent investigating authorities."

The Court interpreted this article to mean that there is no provision in the law that imposes an obligation on the purchaser to have received the report from the Dubai Land Department prior to proceeding with the filing of a case before the Dubai Court.

Finally, the Court concluded that filing a case before the Dubai Court without first having recourse to RERA's Director General in order to solicit the report (that shall, at a later stage, be provided to the

investigating authorities) will not preclude the Court from exercising jurisdiction over the case.