

Decisions by Dubai Land Department: Settling disputes are not binding

Zafer Oghli

z.oghli@tamimi.com

Marwa El Mahdy

m.elmahdy@tamimi.com

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The Court of Cassation held that:

“decisions rendered by the Land Department in disputes that arise between developers and investors are strictly administrative decisions which, unlike court decisions, are not binding and final and are only of a conciliatory nature; they do not impose any limitations on the court’s discretion to hear such disputes”.

Background

The plaintiffs in this case were two developers that sold an off-plan unit located in their project to the respondent, a real estate company.

It was agreed that the respondent would pay 10% of the unit price and the remainder of the price in installments. The agreement stated that in the event the agreement was terminated, the deposited amount would be retained by the seller (the plaintiffs).

The respondent paid the 10% deposit, thereafter; the plaintiffs fulfilled their obligation and deposited the paid 10% amount in an escrow account for the project under the respondent’s name. They also registered the contract under the respondent’s name in the Interim Property Register. 77.6% of the project works was completed.

The respondent however did not pay any other installments after the initial 10% with no acceptable reason. The plaintiffs filed an application to the Dubai Land Department to cancel the interim registration and for a declaration that they were entitled to retain 40% of the total price (as provided by Article 11 of Law No. 13 of 2008 regulating the interim property register in Dubai).

The Land Department agreed with the plaintiffs and issued a decision cancelling the registration of the unit and stating that the plaintiffs’ were entitled to terminate the contract and retain 40% of the total price of the sold unit.

In light of the Land Department’s decision, the plaintiffs filed a case before the Dubai Court of First Instance seeking a court order in the terms of the decision rendered by the Land Department.

Procedural History

The Dubai Court of First Instance issued its judgment ordering the respondent to pay the remaining amount of the 40% of the unit price with legal interest. The respondent was not satisfied by the court’s order and filed an appeal. The Dubai Court of Appeal rendered a decision lowering the amount adjudicated by the lower court but otherwise upholding the appealed judgment.

The respondent challenged the appeal court’s decision before the Dubai Court of Cassation, requesting the

appealed judgment be overturned. The plaintiffs also challenged the appeal court's decision in the part relating to the lowering of the amount previously awarded by the Court of First Instance

The Court of Cassation

The respondent's challenge

The respondent argued that the appealed judgment erred in terminating the contract based on Article 11 of Law No. 13 of 2008. Additionally, the appealed judgment erred when it disregarded the respondent's plea that its breach was due to the plaintiffs' failure to deliver the final sale contract of the unit. Furthermore, the percentage ordered by the court to be paid to the plaintiffs should have been calculated based on the amounts paid to the plaintiffs to date and not based on the full amount of the price.

The court in response of the above argument decided a crucial principal that "decisions rendered by the Land Department in disputes that arise between developers and investors are strictly administrative decisions which, unlike court decisions, are not binding and final and are only of a conciliatory nature; they do not impose any limitations on the court's discretion to hear such disputes".

Simultaneously, it is concluded from reading of Article 11 of Law No. 13 of 2008 and Articles 15,16 and 17 of the Executive Council Decision no. 6 of 2010, that where a dispute arises between a developer and a purchaser in relation to a contract for the sale of an off-plan unit and the developer wishes to terminate the contract for reasons attributed to the purchaser, the following conditions must apply.

the developer should have commenced work on the project. The criteria in measuring the commencement is if the developer has completed the infrastructure work of the project

the developer should have fulfilled all his contractual obligations towards the purchaser and the delay in construction should not be due to any negligence on the side of the developer

the developer should notify the purchaser to fulfill his contractual obligations, either by appearing in person before the Land Department or in writing by means of registered mail or by an email provided that a copy of such communication is provided to the Land Department. Thereafter, the Land Department shall grant the purchaser a period of 30 days to perform his contractual obligations failing which the following apply (ii) if the developer has completed at least 60% of the project, he may terminate the contract and keep a maximum of 40% of the unit's purchase price.

In the event that the payment received by the developer in the escrow account is less than the respective percentage set out in the above clause, the developer may apply to the competent court seeking recovery of the balance owed by the purchaser.

The court noted from the documents prepared by the lower court that the respondent had paid 10% of the price and it was also proven that the plaintiffs has completed 77.6% of the project. Therefore as per Article 11 of Law No. 13 of 2008, the plaintiffs were entitled to 40% of the price amount. The Cassation court concluded that the lower court's decision was sound and upheld it.

The plaintiffs' challenge

The plaintiffs argued that the appealed judgment erred when it reduced the adjudicated amount below the 40% provided in Article 11 of Law No. 13 of 2008. The Court of Cassation found that this argument was sound and overturned the appealed judgment in this part.

Practice Note

The above judgment helpfully clarifies both the status of decisions made by the Land Department, and how relief under Article 11 of Law No. 13 of 2008 works.

The judgment will lend confidence to both developers and investors, since it ensures that both now know the consequences should there be a breach by the purchaser of the payment obligations. Developers will be keen to progress projects in the confidence that the more they progress, the more they can keep of the purchase price should the investor default; where investors have an incentive to maintain instalments, else they risk losing a significant amount on default.