

Void, Defective or Suspended Contracts

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The ongoing and rapid development of property-focused legislation in the Emirate of Dubai together with the large quantity of property decisions being made by the Dubai Courts, particularly the Court of Cassation, has led to the derision of new legal principles which are intended to guide the operation of the law.

Law No. 13 of 2008 was issued on 14 August 08 and was published in the Official Gazette on 31 August 2008; its date of entry into force.

Article 11 of Law No. 13 of 2008 was amended by Law No. 9 of 2009 (which was issued on 12 April 2009). Further, on 14 February 2010, Executive Council Decision No. 6 of 2010 promulgated the Implementing Regulations to complement Law No. 13 of 2008. The amendments and Implementing Regulations clarify and explain more clearly the correct application of the law and the legislator's intention.

Naturally, prior to the introduction of the amendments and Implementing Regulations, the Dubai Courts were deciding cases. Consequently, court decisions issued after the promulgation of Law No. 13 of 2008 and the formation of property courts in Dubai serve not as a mandatory precedent but as a non-binding guide for the courts, which are compelled to rule based on their understanding of the legal provisions and legislation in force at the time their decisions are rendered. Careful consideration of the relevant laws and decisions is therefore necessary to understand how they are applied.

It is worth noting at this point that the most contested provision in Law No. 13 of 2008 is Article 3, which reads as follows:

- "The Interim Real Estate Register is used to record all disposals of Real Estate Units off plan. Any sale or other disposition that transfers or restricts title or any ancillary rights shall be void if not recorded on that Register
- Any developer who made a sale or other disposition that transferred or restricted title prior to the coming into force of this Law should approach the Department to get it registered in the Real Estate Register or the Interim Real Estate Register, as applicable, within 60 days after the date on which this Law came into force."

A careful reading of this Article reveals two distinct phases:

Phase One: Pre-31 August 2008

Phase Two: Post-31 August 2008

Contracts executed during Phase One are not referred to as void contracts. On the contrary: they are considered valid and effective contracts given that developers are asked to register them within the 60 day deadline mentioned. In essence, Phase One contracts are valid and effective but conditional on registration. Phase Two contracts are void if they are not registered in the Interim Real Estate Register, as explicitly provided in Article 3.

This interpretation was confirmed by Article 3 of Executive Council Decision No. 6 of 2010, which states:

“If the main developer or sub-developer applies to register a legal disposition over the real estate unit after the 60 day deadline stipulated in subsection 2 of Article 3 of the Law, the Department shall proceed as follows:

- To register the legal disposition in the Interim Real Estate Register.
- To charge the developer a fine of AED 10,000 (UAE Dirhams Ten Thousand).

Again, Phase One contracts may be registered but subject to a fine if registration is not carried out within the designated 60 day period. Phase One contracts are not void, but are conditional on registration. This approach is further confirmed by Article 210 of the Federal Civil Transactions Code which provides:

- A void contract is one which is unlawful in its essence and form, lacking the elements of a contract or defective in its subject matter or purpose or form as laid down by law for the making of a contract, and such contract shall be of no effect and shall not be capable of being rectified by consent.
- Any interested person may assert nullity and a judge may so rule of his own motion.
- No action for a declaration that a contract is void shall be entertained after 15 years from the date the contract was made, but any interested person may plead nullity of the contract at any time.

A void contract is of no effect and cannot be rectified by consent. Article 3 of Law 13 of 2008 deals with, in respect of Phase One, conditional contracts. At most, unregistered Phase One contracts can be considered defective contracts within the meaning of Articles 211 & 212 of the Civil Transactions Code:

Article 211

- If part of a contract is void the entire contract shall be void unless the subject matter of each part is (separately) specified in which case it shall be void as to the void part, and the remainder shall be valid.
- If part of a contract is dependent upon the grant of consent, then if the consent is given the whole contract will be effective and if the consent is not given only that part will be void together with the consideration therefore, and the remainder of the contract with its consideration will remain valid.

Article 212

- A defective contract is one which is lawful in its essence but not in form, and if the cause of the defect is removed, the contract becomes valid.
- A transfer of ownership under a defective contract shall only be effective if the property itself has been received.
- A defective contract shall only have effect within the scope laid down by the provisions of the law
- Each of the parties to the contract and their heirs shall have the right to cancel the contract after giving notice to the other parties.

On 24 October 2010, the Dubai Court of Cassation in Property Appeal No. 85-10, upheld the decisions of the lower courts which had been issued prior to the implementing regulations and the now settled practice of regarding the 60 days as a regulatory deadline.

I therefore suggest a fresh look at the issue, given the importance of both distinguishing between a void contract and a suspended or defective contract and recognising the effects of declaring a contract void and ordering it rescinded for non-registration. These questions are of paramount importance as a court may rescind a contract for genuine reasons to do with the contractual relationship and the performance of contractual obligations, which would give rise to a right to claim damages, whereas according to Article 210 of the UAE Civil Transaction Code, a void contract produces no effect.

The intention of this article is to encourage reflection on how the changing laws of Dubai are applied and to draw attention to the importance of the performance and enforcement of contracts and the exercise of judicial discretion under Article 272 and 273 of the Civil Transactions Code. The promotion of legal discussions in this vital area should be encouraged due to the rapid evolution of legislation and

precedents.