

Dubai Land Department's Administrative decisions and Judicial review

by Ahmed Allouz - a.allouz@tamimi.com - Dubai International Financial Centre
Marwa El Mahdy - m.elmahdy@tamimi.com -

June 2013

In a recent Dubai Court Judgment, the Court ruled in the appeal filed by the Attorney General that, in the event of a claim from the land developer against the purchaser, the role of the Land Department is merely conciliatory to propose suitable solutions for the parties in order to reach an amicable settlement.

Unless the parties mutually agree to terminate the sale agreement, only courts can issue final decisions to terminate agreements between real estate developers and purchasers.

Facts of the case

The First Respondent in this case, a real estate investment company, initiated legal action before the Dubai Court of First Instance seeking a court order against a Real Estate Agent (the "Third Respondent") to refund the sum paid to the latter as installments of the purchase price for two real estate units located in the Water Front living project. The legal action was filed on the ground that the Third Respondent failed to register the unit as required by the law.

The Third Respondent pleaded that in this transaction, it was acting as an agent for the Second Respondent and requested the action to be dismissed for having been brought against a party who has no capacity within the substantive matter of the dispute and therefore sought to join the Second Respondent to the case.

Procedural History

The First Respondent (Claimant) filed its amended statement of claim to include the name of the Second Respondent. The Land Department confirmed that the units (the subject of the dispute) are registered in the Interim Real Estate Register. In light of this, the First Respondent sought to annul the Sale agreement or alternatively to cancel/terminate the agreement as the Second Respondent failed to commence any construction on the units to date, nor did it secure the required building permits which the First Respondent sought to establish by way of first hand inspection by a court appointed expert.

The Court of First Instance rendered its ruling by dismissing the case. As a consequence, the First Respondent appealed before the Court of Appeal which overturned the lower court's decision and further rejected the case as a result of the administrative decision (issued in the same case) by the Dubai Land Department.

The First Respondent challenged the Court of Appeal's decision before the Dubai Court of Cassation which dismissed the case on the ground that the action is time barred.

The Attorney General challenged the same Court of Appeal ruling pursuant to Article 174 of the UAE Civil Procedure Law which entitled the Attorney General to challenge final decisions of any court provided that the court's judgment contradicts the law or its application.

The Court of Cassation

The Attorney General argued that the appealed judgment was wrong to consider the administrative decision (rendered by the Land Department) as a conclusive and binding judicial ruling which had the effect of *res judicata*, in other words, the lower court rendered the Land Department's decision as equivalent to a Court judgment, which was incorrect. The Attorney General further pleaded that the appealed decision contradicted both Article 11 of the Interim Real Estate Register Law No. 13 of 2008 and Article 15 of the Executive Council Decision no. 6.

The Cassation Court, in its ruling, stated that articles from the UAE Civil Transactions Law as well as the aforementioned articles the Interim Real Estate Register Law No. 13 of 2008 and the Executive Council Decision No. 6 of 2010 provide that contracts may be terminated either by parties' agreement or a court order. Furthermore, the role of the Land Department in settling a developer-purchaser dispute is to endeavor and conciliate suitable solutions for the parties in order to reach an amicable settlement and does not extend to the termination of contracts. The court further stated that the Land Department's decision is not conclusive so as to preclude bringing an action for breach of contract to determine entitlement to recover damages under the law.

The lower court failed to examine the merits of the dispute when it decided to dismiss the action on the basis that the Land Department had previously issued a decision authorizing termination of the units sale agreement, and that this administrative body, which was not a party to the proceedings, had exercised its powers and rights in accordance with the law. Therefore, the Cassation Court overturned the appeal judgment and referred the case back to the Court of Appeal.

Practice note:

The above Cassation decision confirms that the Land Department's role in disputes is limited to conciliation and is subject to judicial review, it further highlighted that there is judicial control over administrative decisions and that it is the Courts that ultimately terminate real estate agreements.