



# UAE: NO BREACH OF CONTRACT SAYS THE COURT OF CASSATION IN A RECENT DISTINCT REAL ESTATE JUDGMENT

A recent judgment by the Dubai Courts in favor of a major real estate developer has shed light on how the courts interpret the termination of a sale and purchase agreement (SPA) entered into by an investor for a hotel apartment specifically for investment purposes.

The Court of Cassation recently handed down a distinct judgment: **the purpose behind the purchase of a hotel flat or hotel unit is critical for determining the right to terminate the SPA and claim for a breach of contract.**

In this particular case, the purchaser had claimed for a breach of contract and a refund of the purchase price after the developer made modifications to the hotel apartment's executive unit, which was therefore, not consistent with the specifications of the unit as indicated in the SPA. The developer argued that the modifications were made to make the unit more conducive to rent out and thus, to generate more profits for the purchaser, which was consistent with the ultimate purpose of the hotel unit purchase. The Court of First Instance and the Court of Appeal had previously ruled in favor of the purchaser and determined a breach of contract arising from the changes to the specifications of the executive unit.

Habib Al Mulla & Partners, a member firm of Baker McKenzie International (on behalf of the developer) appealed to the Court of Cassation, which after reviewing the documentation and evidence, rejected the initial judgment of the Court of First Instance and Court of Appeal. It determined that the lower courts failed to examine and consider the purpose of the contract entered between the purchaser and the developer, which was for investment purposes, not for personal purposes or to reside in the unit. In addition, the Court of Cassation held that the parties had agreed that the developer had a right to make any changes to the specifications of the unit, and so accordingly, the purchaser had no right to claim for a breach of contract or demand termination of the SPA on these grounds. The Court of Cassation concluded by alluding to the initial judgment as flawed by deficiency in reasoning and by violation of the developer's right to defense, in so far as the lower courts should have included in their judgment a clear indication that they had reviewed and responded to all the evidence presented as well as the rightful defense of the developer.

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