

Regarding the subject of the lawsuit, Court initially tackles the original motion of the Plaintiff's amended motions on rescinding the Sale Agreement of the land plot No. 18 located in in Dubai and since it is legally well-established that a contract is the law of the parties thereto (*pacta sunt servanda*), hence none of the contracting parties may not renege, amend or terminate the contract except upon the consent of the two parties thereto or for reasons that are provided by Law - in Article 267 of Civil Transaction Law- A contract must be performed in accordance with the inclusions thereof and in a manner that complies with good faith.

A contract is not limited to obligating the parties thereto to the content thereof only but it includes the necessities of same in accordance with law, customs and nature of disposition. – Article 246 of Civil Transaction.

The consent of the contracting parties and the obligations on each are the rule in a contract – Article 257 civil – and Article 273/1 of Civil Transaction Law is deemed a provision that supplements the will of the contracting parties as it includes delegating the right to each of the contracting parties in the bilaterally binding contracts to move for contract termination if a contracting party fails to fulfill the dependent obligations towards the other party. A contract is supposed to include this term even if it is not actually written in it. Further, it is impermissible that the contracting parties are deprived of this right or the scope of this right is curbed except by an explicit agreement. In addition, assessing whether the reasons for termination suffice or not and negating delinquency of the party moving for termination is reserved for the court of merits and there is no interference for the court of cassation on same so long as the court of merits has founded the judgment it passed on valid grounds. So long as

Court has founded the incident it inferred on valid reason, hence it is not obliged to follow all the arguments by the litigants and address individually because the establishment of this reality constitutes implicit reply to any opposing argument.

Whereas it is legally established that among the rules that law stipulates in how to assess the sold is Article 523 that provides that When the quantity of the thing sold is fixed in the contract and, in the absence of an agreement or custom, a deficiency or increment in it shows, the following rules shall apply: 1) In case severance is not detrimental to the thing sold, the increase shall be in favor of the purchaser, who is entitled to recover it in kind, and the deficiency recovered from his account whether the price is fixed by unit or for the total of the thing sold.2)If the thing sold shall be adversely affected by severance and the price is fixed per unit, the vendor is entitled to the value of the increase and the deficiency charged to his account.

If, however, the named price covers the total value of the thing sold, the purchaser is entitled to the increment while the price shall not apply to any deficient quantity.

It is also legally established as per Articles 3, 5 and 13 of 2008 on the regulation of the initial real estate registration in Dubai and in Article 20 of the Executive Board Decree No. 6 of 2010 on approving of the executive regulations of the aforementioned law indicates that the developer guarantees to the Buyer the limit designated for sale in the contract and developer

shall register the unit in the initial real estate register in the same area designated in the contract, if it is revealed that the limit of the area of the unit that was registered is less than the limit agreed upon in the contract, the buyer will be entitled then to claim for compensation or for the termination of the contract and the refund of the price he has actually paid so long as this missing area is grave enough such that had he known of this, he would not have completed the contract. Challenge for Cassation No. – real estate, court hearing of 13-11-2019)

Whereas it is legally well-established that the court of merits has absolute authority in constructing and understanding the facts in the lawsuit, checking and assessing evidence and documents submitted therein, adopting what it deems comforting and dismissing all else, in addition to interpreting the agreements, declarations and all other documents according to what it deems close to the intent of the contracting parties or parties concerned therein; in assessing the work of the experts assigned as an element of proof in the lawsuit that is subject to the authority of Court to adopt whenever it finds it trust-worthy and convincing and it is compliant with the right in the lawsuit. In addition, Court is entitled to assess the justification of termination of bilaterally binding contracts whenever Court finds the judgment it passes on valid grounds. (Challenges for Cassation No. – real estate – 25-9-2019).

In application of the aforementioned and in the light of the aforementioned legal provisions and judicial principles and the documents submitted by the Plaintiff and the content of the report by the expert assigned in the lawsuit as shown in the recitals that the purchase offer

submitted by the Plaintiff on 5-3-2018 stipulated that for purchasing the land plot No. 18 in of area 1,860,542.05 square feet as shown in the title deed dated 12-2-2008 issued by the Land and Property Department affiliated to Dubai Government. On 12-2-2008, the title deed was issued by the Land and Property Department affiliated to Dubai Government for the land subject of litigation indicating that the total area is 1,860,542.05 feet. The island plan dated 4-2-2008 that is enclosed to the title certificate that the area of the elevated land is 968,752.00 square feet (90,000.00 m²) and the area of depressed land is 891,790.00 square feet (82,850.00 m²) and the total area of the land plot is 1,860,542.00 square feet (172,850.00 m²). The expert is of the view that the area agreed upon in the purchase offer of the land subject of litigation is the area proven in the title certificate issued by Land and Property Department and the total area of land plot including elevated and depressed land is 1,860,542.05 square feet. Since Court finds the expert's report in this regard trustworthy and since the Plaintiff's reason for moving for termination is a deficiency in the sold area with more than 50 % of the total area proven in the contract; since the aim of contract conclusion in good faith dictates that after having inspected the land before purchase and accepted it under the condition thereof as shown in the offer that the Plaintiff accepts that the sale is completed "as- is". In addressing the Plaintiff's challenges, the report states that the dated 1-12-2008 issued by stated the names of the clients who have purchased the land plots or islands in receive the land plots locations that include the definite title in addition to the depressed land plots and the elevated land plots (islands). Each; and plot generally includes (elevated land plot or island that includes fixed side slopes based on natural operations for a certain area of the project and all the islands external borders are similar to the beach borders in nature + the depressed land surrounding

the defined architectural site). Since Court finds the inspection of the conducted by the appointed expert trustworthy and since it is revealed through said inspection that the area of the elevated land stated in the land title certificate issued by the Land and Property Department affiliated to Dubai Government is 968,752.00 square feet. This is less than the area stated in the title certificate by: $968,752 - 958,709.2 = 10,042.80$ square feet, i.e. it is less by only 1.04 %. It is shown that the area of the sold unit that is designated in the contract in determining the area of the sold real estate unit on the map and in accordance with the specification in the contract, the First Defendant has adhered to the obligation to register the unit in the interim real estate register in kind the same area specified in the contract. In addition, the deficiency that the appointed expert has included in the report thereof is not that grave to give the Plaintiff the right to move for contract termination or compensation due to the presence of a prior agreement and inspection of the sold on which basis the sale and purchase took place. Based on the foregoing, Court finds that the Plaintiff may not move for the termination of the sale and purchase agreement for this reason and Court may not grant same and rules to dismiss this motion as will be stated in the operative part of the judgment.

Regarding the Plaintiff's motion to obligate the Defendant to refund the sum paid for advance payment including price, compensation for harm and missed profit it incurred due to the deficiency in the area, regarding the motion on advance payment refund, since it is legally well-established that the elements of liability whether contractual or liability in tort is fault, harm and the causation relation between them, plus the burden of proving these elements lies on the creditor, inferring the fault dictating liability, harm and the causation relation between them is of the authority of the court of merits whenever it founds the judgment it passes on

valid grounds that are derived from the firmly rooted facts in the papers. (Challenge for Cassation No. _____ – civil – court hearing of 30-5-2019).

By applying the foregoing, Court orders the dismissal of the sale contract termination motion, thence the parties persist in performing the dependent contractual obligations and the Plaintiff is not entitled to claim the refund of the price and the contract is announced valid and enforceable which is the other face of the court judgment on the dismissal of the termination. Regarding the compensation, it is revealed to Court through the contract and the assigned expert's report that it is not stipulated in the purchase offer that the island elevated area is 1,860,542.05 square feet, but it was rather stipulated therein that in order to purchase the land plot No. 18 in the _____ of area 1,860,542.05 square feet as indicated in the official title deed dated 12-2-2008 issued by the Land and Property Department affiliated to Dubai Government. Further, the appointed expert has not found in the documents submitted thereto any indication that the Defendants were aware that the project that the Plaintiff intends to construct on the land plot necessitates that the solid area of the land is 1,860,542.05 square feet, i.e. there is no difference or deficiency in the area, hence the civil liability against the Defendant is not established and since there is no harm present against the Plaintiff's right, in addition the Plaintiff has acted delinquently in paying the rest of the price installments and the payment delay was extended upon the Plaintiff's request, but still the Plaintiff has not make the due payment and the Defendant may not be blamed for retaining the price. In addition, the Defendant has performed the contractual obligations by registering the initial sale contract at the Land and property Department, hence the compensation motion is

unsubstantiated too and Court orders the dismissal of the lawsuit *in toto* as will be stated in the operative part of the judgment.

Regarding the counterclaim instituted by the First Defendant against the Plaintiff, since it is legally established in accordance with Articles 97, 99 and 100 of Civil Procedure Law that the Defendant is entitled to submit interlocutory motions that are intricately related to the main motion such that it is for the good administration of justice to hear them simultaneously and Court must decide thereon along with the main motion or to postpone deciding upon the interlocutory motion until after settling the main motion whenever it has an independent status and the association between them is subject to partition and the terms of its admittance and the jurisdiction to hear are fulfilled. If it is revealed that there is an intricate association between them, the good administration of justice dictates non-separation between the two motions by deciding upon one and excluding the other to be decided upon later after being thoroughly studied, they must be settled simultaneously in order to evade whatever harm that may be incurred if it institutes an independent lawsuit moving for the debt thereof and the Plaintiff becomes insolvent in the lawsuit after executing the judgment passed in the favor thereof ruling the debt payment before the Defendant obtains a judgment in the lawsuit thereof. (Challenges for Cassation No. 113 and 118 of 2016 – labor, court hearing dated 25-10-2016).

Regarding the motion submitted by the aforementioned Defendant, it fulfills the formalities and it was expressed vis-à-vis the Defendant and the due fee was paid up as elucidated hereinabove, hence it is admitted in form.

Regarding the subject, Court addresses the first motion therein which is to obligate the Defendant to perform the contract and since Court, by the authority invested therein in characterizing the motions in the lawsuit in accordance with the lawsuit incidents and not the words that formulated it, the reality of the first motion is actually claiming for ruling the validity and enforceability of the contract dated 2-4-2018 it issued to the Counter Defendant. Since it is legally established that the real estate validity and enforceability lawsuit is a lawsuit of entitlement of the money subject of the contract targeting the performance of the Seller's obligations that transfer the title of the sold real estate to the buyer in execution in kind and obtaining a judgment that is requested to be registered instead of the contract in transferring the title. It is a substantiative lawsuit in which the authority of Court extends to investigating the subject, scope and enforceability of the contract. It necessitates that the sale subject of the contract transfers the title, which in turn necessitates that Court disposes the matter of the validity of the same and verifies that it fulfills the terms and conditions necessary for the conclusion and validity thereof. Further, a seller may not be obligated to perform the dependent obligations thereof if seller pleads that the buyer has not performed the dependent obligations thereon by failing to pay the due price of the sold on the agreed upon schedule. This is inferred by the court of merits from the evidence raised before. Court has the authority to understand the contracts articles and interpreting the terms and conditions disputed over within the frame of what it deems close to the intention of the contracting parties and it is guided in this by the circumstances and incidents of the lawsuit whenever the statements of the contract bear the meanings that Court adopted. (Challenge for Cassation No. — real estate, court hearing of 25-5-2016)

It is also legally established that the real estate sale validity and enforceability lawsuit is a lawsuit on the entitlement of money that aims at the performance of the obligations on the seller that transfer the title of the sold real estate to the buyer, a performance in kind and handing same to the buyer in exchange of the obligation on the buyer to pay up the total price and obtain a judgment to be registered *au lieu de* the contract in transferring the title – this signifies and infers the permissibility of instituting it by the seller and buyer. The trial judge must dispose the matter of the contract validity and investigate all the reasons evoked regarding the presence or absence of the contract, the validity or invalidity of same and verifying that the seller and buyer have duly performed the dependent obligations thereon particularly adherence to handing over the sold and paying up the price of same. (Challenge for Cassation No. , court hearing of 11-5-2014).

Since Article 1277 of Civil Transaction Law provides that the title of the real estate and the other rights in rem are not transferred between the contracting parties and in the right of any third party except by registration in accordance with the registration laws. Whenever said registration is conducted, the title and right in rem over the real estate is thought to have transferred as of the moment the title cause is established. This is due to the fact that the aforementioned article in providing that the title or other rights in rem are not transferred in real estate properties except by the register designated for this purpose in the Department of Land, has accordingly placed a legal restriction on the title transfer to the buyer once the sale is completed. If registration is conducted, then the title to the real estate or the rights in rem thereon have been transferred to the alienee and all the ensuing effects are directed thereto. (Challenge for Cassation No. 72 of 2011- commercial, court hearing of 7-6-2011).

Since it is legally established that the court of merits has absolute authority in understanding and constructing the reality in the lawsuit and assessing the work of the appointed experts as an element of proof in the lawsuit and it is subject to the discretionary authority of Court whether to adopt it if it finds it trustworthy and comforting and complies with what court deems as the right in the lawsuit. Further, whenever Court deems it proper to adopt the report as substantiated by the reasons therein and refers to same and deems as part of the grounds of the judgment it passes without a need for supporting it by special reasons. It is not to be blamed if it does not follow the petitioner in the arguments it raises and address same individually so long as it founds the judgment on valid grounds derived from the facts rooted in the papers and logically lead to the conclusion reached. (Challenge for Cassation No.

– labor, court hearing dated 14-1-2020)

In application of the aforementioned and since it is shown in the papers that the counter plaintiff and Court has previously ruled in the main lawsuit to dismiss it and since the contract, document of the present lawsuit is the same document of the main lawsuit that the Plaintiff (Counter Defendant) agreed to including all the articles subject of the contract, price and installments. The Counter Plaintiff has registered the disposition in the initial real estate register as necessitated by law in connection to the land sold on map. Plus, the content of the report by the appointed expert that the final purchase offer was signed in consent by the Plaintiff and First Defendant at a consideration of Sixty Million Dirham and the Plaintiff has paid Twelve Million Dirham as an advance payment and the lingering sum is Forty Eight Million and is payable on 2-2-2019 and the contract has not included any articles that conflict with public order and rules of conduct and since the Plaintiff is entitled to move for the

performance of the contract and the Plaintiff has not submitted any proof that it has paid the lingering sum despite the fact that the contract was registered at the Land and Property Department in the name thereof in preparation of the final registration upon the payment of the rest of the price. This is left unaltered despite the allegation by the Defendant that the non-payment is attributable to the right thereof to retain the sum due to the deficiency in the area. Court has reached a conclusion to dismiss the lawsuit on the basis of this reason. Further, the obligation of the seller to take the procedures necessary for the registration of the real estate property in the name of the buyer in the real estate register corresponds to the obligation of the buyer to pay the full price, considering the fact that the price is an influential element of the sale contract, hence the seller has the right to abstain from performing the contractual obligations represented in transferring the title to the buyer if the buyer does not perform the contractual obligations thereon by paying the price. The rule in determining the price payment deadline is by agreement among the seller and buyer; if there is no agreement between them in this regard, the buyer shall be obliged to pay the price upon contracting and before claiming for registration a copy of the primary sale certificate that is registered at the Land and Property Department – Sale and purchase contract – land registration fee payment receipt, hence Court grants the Counter Plaintiff to the motion thereof on obligating the Defendant to perform the purchase contract and obligate it to pay the sum of AED 48,000,000. 00 (Forty-Eight Million), as the rest of the sold, on condition that the Plaintiff adheres to transferring the final title to the Counter Defendant after payment and as will be stated in the operative part of the judgment.

Regarding the Counter Plaintiff's motion on paying the fees it has paid for the contract registration at the Land and Property Department and since it is evident in the contract articles as stipulated in Article 8 that the Seller – Counter Plaintiff- shall be fully compensated and without any restraints regarding incurred costs or charges or submitted claims and this means that the buyer pays all the expenses and obligations arising of the contract including by way of example and not limitation the registration fees that are paid up upon title transfer, since the Plaintiff has actually registered the land contract in the interim real estate register at the Land and Property Register on 16-1-2020 and has duly paid up the due fees and submitted in proof of this a copy of the interim sale certificate registered at the Land and Property Department and the land contract registration payment receipt with the current claim sum. Furthermore, the appointed expert has proven this, hence the Defendant is under the obligation to compensate the Plaintiff for the payment of this sum and paying this sum in application of the principle of the autonomy of will that is the source of obligation in the contract to pay these costs and expenses. Court grants the Plaintiff this motion and rules to obligate it to pay the sum of AED 2,400,000 as land contract registration fees as will be stated in the operative part of the judgment.

Regarding the Plaintiff's motion on the legal interest due on the initially adjudicated sum at a rate of 12 % as of the maturity date and until full payment is made; since it is legally established as per the judicial precedents of the Court of Cassation that the delay interests ruled in favor of the creditor upon the request thereof are merely compensation for the harm it incurred due to the procrastination of the debtor despite the solvency thereof to pay the debt and despite the fact that it became payable and hence preventing the creditor from making

benefit from the sum, This is a supposed harm that does not admit proving the opposite and it must be compensated for this harm by a definite percentage due to the delay fault in itself and it shall be calculated as of the date the judgment becomes final irrevocable if Court has vast authority in assessing the adjudicated debt (Challenge for Cassation No. – labor – court hearing of 7-5-2019).

It is legally established that the delay interests claimed when the debtor acts delinquently in fulfilling the obligation thereon is a compensation for whatever harm that the creditor may incur as a result of payment delay whether this debt is civil or commercial. It is customary to calculate the delay interest at a rate of 9 % annually, unless it is agreed upon otherwise.

Since it is proven to Court that the claimed debt is part of the price, which is an amount of money that is payable, hence Court rules interest on said sum at a rate of 9 % annually as of judicial claim date and until full payment is made.

Regarding the fees and expenses including attorney professional fees, Court obligates the Plaintiff and Counter Defendant to pay them for the main lawsuit and counterclaim respectively for losing same pursuant to Article 55/1 and 2 of the executive regulations of Civil Procedure Law.

Now & Therefore

Court rules in presentia, as follows:

First: in the main lawsuit: to dismiss the lawsuit and obligate the Plaintiff to pay the fees, charges and one thousand UAE Dirhams as attorney's professional fees.

Second: in the Counterclaim: to admit the same in form and in the subject matter: to obligate the Defendant to perform the contract, subject matter of the lawsuit, by paying to the Plaintiff the remaining amount of the sold object price, namely, AED 48,000,000.00 (Forty-eight Million UAE Dirhams) and the legal interest at a rate of 9% annually on the adjudicated sum as of the judicial claim date and until full payment. Plaintiff is further obligated to transfer the title to the Counter Defendant after the full payment is made. The Court then obligates the Defendant to pay to the Plaintiff the sum of AED 2,400,000.00 (Two Million, Four Hundred Thousand UAE Dirhams) plus any due fees, charges and one thousand UAE Dirhams as attorney's professional fees.)

Signature

* This document is electronically signed and approved. The authenticity hereof may be verified by accessing the Dubai Courts website (our e-genera services – Inquiries).