

# Newsletter

DUBAI DESK

Case Study

## The Rescission of Contract in Case of Material Breach of Performance



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#### **Impact of conflict of interest on Arbitral Awards The Rescission of Contract in Case of Material Breach of Performance**

#### **Hotel Apartment Purchaser's Entitlement to Contract Rescission Upon Developer's Failure to Obtain Relevant Operating License**

#### **Overview**

Contracts are an essential aspect of conducting businesses and operating personal transactions. They are legally binding agreements entered into between parties that detail the terms and conditions of an arrangement. In the event a contract is entered into between contractors, the latter parties expect their analog to perform the any and all obligations emanating from the contract. Nonetheless, an enumerated list of options would come into light to a contracting party on the assumption that the opposing party has perpetrated a fundamental and material breach of contractual obligations by trespassing the scope of the set contractual constraints. Albeit being categorized as a case-specific, a “material breach” of a contract considerable efforts are constantly provided by the lawmakers and courts with an aim to tentatively seal the least-possibly-vague annotation of the concept. The aforementioned concept construes a cornerstone of contract law, pursuant which the non-breaching party may be entitled to the rescission of the contract along with the conceivability of giving rise to a right of seeking damages for any losses suffered as a repercussion of the breach.

# Newsletter

## DUBAI DESK

### Case Study

### **Impact of conflict of interest on Arbitral Awards The Rescission of Contract in Case of Material Breach of Performance**

The latter stipulated notion constitutes a path by which the Court of Cassation in the United Arab Emirates abides when rendering its judgement. In a recent judgement issued by the Dubai Court of Cassation in year 2022 it has been decided that a serious and substantial breach of contract exerting influence on the heart of the agreement and fundamentally undermining the purpose of the contract leads to direct rescission of the said contract.

#### **Legal Background**

The Civil Transaction Law in the United Arab Emirates embraces the principle of Autonomy of Contract which remains intact as a settled and fundamental rule of law. The theory of autonomy stipulates that parties to a contract can enforce or be subject to any benefits or obligations under that contract as they have a inconsequentially constrained margin of freedom- subject to the conformity with Public Policy matters- as contracting parties are free to contract on terms and on any terms they choose. However, once a contract's terms and conditions have been thoroughly reviewed and agreed-on by the parties, neither party may have the recourse of eluding from the stated terms.

# Newsletter

## DUBAI DESK

### Case Study

### **Impact of conflict of interest on Arbitral Awards The Rescission of Contract in Case of Material Breach of Performance**

In the UAE, the right to rescind or terminate a contract in case of material breach is provided under article 267 of the Civil Transaction Law providing that if one of the parties fails to perform their obligation, the other party may either compel performance or demand rescission of the contract, with damages in either case. This article applies to all types of contracts, whether they are commercial, personal, or real estate contracts. In the same direction, it is worth noting that the right to rescind a contract is only available in case of fundamental and substantial breach of contract that impacts the core of the agreement and fundamentally undermines the entire purpose of the contract. As formerly stated, the process of providing a definition of the “material breach” notion is scrupulously dependable of a case-by-case basis. Nonetheless, pursuant a long series of previous case precedents, it has been settled that the theory of fundamental and material breach causing rescission of contracts relies on a crucial objective criterion compelling the conditions of an express agreement logically leading to suffered damages; and simultaneously to a subjective criterion shedding light on the aggrieved party’s expectations from the contracts.

### **Judgement Under Study**

The case under study is a verdict rendered by the Dubai Court of Cassation in 2022. Pursuant this judgement, the Court of Cassation has decided upon a dispute involving a

# Newsletter

## DUBAI DESK

### Case Study

#### **Impact of conflict of interest on Arbitral Awards The Rescission of Contract in Case of Material Breach of Performance**

real estate purchase agreement entered into between one of the leading companies in the real estate sector in the United Arab Emirates and an individual buyer. The facts of the case illustrated a real estate deal concluded between the buyer and the Company pursuant to which both signatory parties agreed to the purchase, by the first party, of a hotel apartment constructed and finalized by the real estate developer against the settlement of a high amount as price of the said unit. Albeit the buyer's fulfilment of all contractual obligations and the compliance with the constraints explicitly stipulated in the agreement, however, the Company has failed to comply with its contractual obligations, and unsuccessfully declined from meeting the buyer's expectations. According to the verdict, the contracting buyer has favorably carried out its contractual obligations and has settled all the due financial commitments within a timely and prompt manner. Nonetheless, from the side of the other contracting party, a flagrant inconsistency has occurred, as the developer has not respected the terms and conditions of the agreement and has amended the intended use and allocation of the project from delivering hotel apartments to the delivery of residential apartment units without prior notice nor approval received from the other contracting party. Before the Court, the developer alleged that the change in the terms of contracts occurred as a consequence of failure to obtain the required permit from the authorities.

# Newsletter

## DUBAI DESK

### Case Study

#### **Impact of conflict of interest on Arbitral Awards The Rescission of Contract in Case of Material Breach of Performance**

Moreover, the real estate company has claimed that its contractual obligations as a developer were restricted to the commitment of obtaining the necessary license to build the units as a hotel apartments only and do not exceed to the obligation of obtaining the licenses required to manage the said units as hotel apartments subsequently to the construction. The reasoning adopted by the Court is the judgement consisted in highlighting the technical texts of law expressly underlining the developer's obligation to provide to the buyers all the services and requirements needed for its intended and actual organic operation after obtaining the license. Pursuant to the court's reasoning: "In addition, the respondent did not fulfill its contractual obligations under the terms of the contract, since the respondent failed to complete the required mandatory procedures to hand over the unit, the subject of the lawsuit, as a hotel apartment. The matter concluded by the court is that it is proven that the respondent violated their contractual obligations for non-execution of fundamental and material elements of the contract, the case document in a manner consistent with what is required by good faith to hand over the respondent the case and descriptions that were agreed upon between them, which is a hotel unit, which in the absence of a tourist license cannot be used and benefited as per its intended operation. With it on the basis of a hotel apartment, which was the subject crucial of consideration when concluding the contract for the buyer, and without which the buyer would not have contracted with the respondent to buy it in a manner that provides the

# Newsletter

## DUBAI DESK

### Case Study

#### **Impact of conflict of interest on Arbitral Awards The Rescission of Contract in Case of Material Breach of Performance**

justification for rescission”. In compliance with the recent case precedents arisen in connection to the concept of material breach of contract, the judgement has provided that since the buyer has fulfilled all his contractual obligations towards the developer in terms of settling all the latter’s due financial entitlements on time, therefore it has become undisputable that the developer had to execute its obligations emanating from the agreement in compliance with any and all of the terms and provisions set forth in the agreement signed by the parties. Furthermore, the Court has accentuated the evident fact that the buyer has initially concluded this purchase agreement upon the purpose of having delivered a hotel apartment with all services associated. Hence, the real estate company’s failure to deliver the latter to the buyer defines a fundamental and material breach of contract entitling the buyer to claim rescission of the agreement albeit payment of complete price. Based on all the above, the Dubai Court of Cassation has judged upon the dismissal of the cassation filed from the developer and order the latter to return parties to their original state prior to contracting, and ordered the exchanged money to be returned accrued with an interest.

# Newsletter

## DUBAI DESK

### Case Study

## Impact of conflict of interest on Arbitral Awards The Rescission of Contract in Case of Material Breach of Performance

### Conclusion

In conclusion, in order for a breach to be deemed as fundamental and material leading to the rescission or termination of the agreement entered into between contracting parties, the breach shall be flagrant and substantial breach of contract that impacts the core of the agreement and fundamentally undermines the entire purpose of the contract. The seriousness of the breach may entitle the non-breaching party to claim damages for any losses suffered as a result of this mis-performance. In all instances, the rescission of contract constitutes an equitable remedy that aims to restore the parties to their pre-contractual position, and shall be an available remedy to the other contracting party bearing severe violation of contractual obligations that rendered the contract worthless or considerably impaired its value.

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**Paralegal**



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**Partner**