

# DOES LATE COMPLETION OF A PROJECT

## ON BEHALF OF THE DEVELOPER RESULT IN THE TERMINATION OF A SALE PURCHASE AGREEMENT?



Ashraf El Motei

Ashraf El Motei, Managing Partner of Motei & Associates, shares an insight into a recent judgment in the UAE.

The delay of the developer in completing the project doesn't provide the buyer an automatic termination of the sale purchase agreement (SPA), if developer had remedied such breach before the issuance of a final court order. In other words, the fact that a SPA contains a termination clause, does not automatically result in its termination in the event of breach by the developer, but is still subject to the discretion of the judge who may provide time to the developer to fulfill its contractual obligations and avoid termination, irrespective of the delay.

In an arbitration case filed before the Dubai International Arbitration Centre (DIAC), the Tribunal rejected a buyer's (Claimant) claim for termination of a sale purchase agreement for a residential unit, based on Claimant's contention that developer (Respondent) was in breach by reason of delay in completing the project and handing over the unit. Instead the Tribunal directed the developer to fulfill its contractual obligations under the SPA and deliver the unit to buyer.

During the course of the arbitration proceedings, Claimant argued that since Respondent did not fulfill its contractual obligations as per the binding terms of the SPA, Claimant is entitled to request for the termination of the SPA and refund of all payments made towards the purchase price.

Motei & Associates, on behalf of the Respondent (developer), argued that after the commencement of the project there were substantial circumstantial changes in the real estate market in Dubai due to global financial crisis and the sudden economic down turn in Dubai, which could not have been anticipated or foreseen at the time of contracting with buyer. As a result, the progress of the construction of the project was affected which resulted in the delay in completing the project and handing over the unit. However, in spite of such circumstances, Respondent has acted in good faith and fulfilled its contractual obligations by completing the project and serving the completion notice on Claimant prior to the issuance of a final decision on the dispute in question.

Accordingly, the Tribunal has concluded that:

The Respondent (developer) had avoided the termination of the sale purchase agreement by fulfilling its contractual obligations under the SPA and completing the project before a final decision was rendered on the merits of the dispute in question. Therefore, the Tribunal decided to reject the Claimant's request to terminate the SPA and ordered the Claimant to pay to Respondent the balance of the last payment owed on the purchase price of the unit. However, the Tribunal had exercised its discretion and awarded the Claimant compensation for the damage incurred as a result of the delay in delivering the property.

#### Author's Profile:

Ashraf heads the dispute resolution practice in Motei & Associates. He specializes in general commercial and real estate litigation before local courts in the UAE, and has principal focus on international commercial arbitration. He has acted as counsel, arbitrator and co-arbitrator in numerous arbitration cases. For more inquiries on the above article, please write to: [a.motei@motei.com](mailto:a.motei@motei.com)



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Anthony Mallows, Director, Masdar City

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## CITYSCAPE

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- SQM | 18,000
- PARTICIPANTS | 17,138

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