

IN THE NAME OF ALLAH, THE MOST GRACIOUS, THE MOST MERCIFUL
In the name of His Highness, Sheikh Khalifa bin Zayed bin Sultan Al Nahyan
President of the United Arab Emirates
Ajman Court of Appeal

The Court is Composed of:

HE Judge - Sultan Khalifa Al Matrooshi	President of the Chamber
The membership of HE Judge – DR. Hassan Ahmed Al-Hammadi,	Member
The membership of HE Judge – Asami Mohammed Kishk,	Member
Secretary of the session: Noura Mandous	Secretary

In its public session held on Tuesday, 5/6/2018
At Judiciary House, in the Emirate of Ajman
The Court has issued the following judgment.

On appeal No. 276 of 2018, Ajman Appeal

Filed by the appellant: Sweet Homes Real Estate, LLC – Ajman Real Estate Establishment
Against the appellee: Khalil Ismael Taha

On the judgment issued on: 26/2/2017 AD by the Civil Chamber

Ajman Union Civil Court in case No. 3543, Plenary Commercial Ajman

IN THE NAME OF ALLAH, THE MOST GRACIOUS, THE MOST MERCIFUL
 The reasons and operative of the judgment issued on appeal No. 276 of 2018,
 Commercial Plenary Ajman issued on 29/5/2018

After hearing the pleading, reading the case documents and deliberating legally: Whereas the facts of the appeal are summarized, as drawn from the case documents and the judgment appealed, in that the appellee had filed the lawsuit No. 3543 / 2017, Commercial Plenary Ajman and requested at its end to rule to oblige the appellees to hand over the sold apartment to him in the same amount as specified in the contract and to oblige them jointly and in solidarity to give him a financial compensation of three hundred thousand dirhams because of non-handing of the apartment over at the specified time and to oblige them to pay the legal fees and expenses. This was based upon the say that under a contract of purchase dated 28/5/2006, he agreed with them to sell him apartment No. 412 - B8 in Lake Towers of Ajman Garden to be located on plot No. 118 Lakes Towers Ajman Garden, Emirates City that consists of 2 rooms, lounge, kitchen and 2 bathrooms with a total area of 1142,91 square feet. In addition, the sale included a car park provided that sale price is AED 348.000 that was paid in full. It was stipulated that in sale contract that handover would be on 1/12/2008, but they did not fulfill their obligation and this resulted in a delay which caused damages that forced him to spend AED 280,000 in rent in addition to requesting a material and moral compensation estimated in the amount of AED 20,000. Therefore, he was prompted to file the suit and he attached a document portfolio that included the purchase contract, a receipt number 239 of check at AED 5000, another number 240 via check No. 16 at AED 42500, another check number 241 at AED 20.000, another check No. 240 for checks from No. 26 to 37 at the amount of AED 280.00. It included a statement of account from Sweet Homes Real Estate at AED 348.000. At the Office of Case Management, the agents of the two parties attended and the defendants did not provide their answer. The case was referred to the court, which heard the case on 11/2/2018 that was attended by the agent of the plaintiff and an alternate lawyer representing the agent of defendants. The Court decided to hold the case for judgment.

At the hearing held on 26/2/2018, the Court ruled as presumably in attendance to oblige the defendant to surrender the apartment No. 412-B8 located in the Towers of Ajman Gardens in the UAE, the subject of the real purchase contract dated 28/5/2006 to the plaintiff and to pay the plaintiff jointly and severally a compensation of one hundred thousand dirhams and the legal expenses and five hundred dirhams in lieu of the lawyer's fees. The Court rejected otherwise requests.

Since this judgment has not been accepted by the appellees, they filed this appeal under a report that was lodged at the Case Management Office on 25/3/2018. They requested therein to accept the appeal in form and on the subject of the contested judgment to amend it and cancel the amount of compensation of AED 100.000 (one hundred thousand dirhams and to rule to dismiss the lawsuit for the reasons summed up in its error in the application of law, deficient in causation and corruption in inferred where the judgment has been issued contrary to the law because the sentence appealed violated law and reality.

The appeal was deliberated at the registered sessions and at the hearing of 1/5/2018, the Court ruled to hold the lawsuit for the verdict on today's hearing Whereas regarding the form of appeal, it is filed on the prescribed time and is therefore acceptable.

As for the subject of appeal, it is established that the interpretation of the agreements, documents and other publications is subject to the discretionary authority of the trial court as subject matter, which has the authority to understand the reality in the case and appreciate the evidence therein as long as it does not rely on a fact without a foundation and has revealed the truth that it was convinced of and has established its judgment on palatable reasons sufficient to lead to its judgment. Whereas regarding the plea of the two appellants against the judgment that they must pay compensation for delaying the handing over of the apartment, this is a misplaced decrying since it is proven from the documents of the lawsuit that the two appellants violated the terms of the contract and their commitment to implement the contract, deed of the lawsuit, although the appellee fulfilled his obligation and paid the amounts agreed from the price of the sale. It is legally established and pursuant to the text of the article 246 of the Civil Transactions Code, that the contract is to be implemented according to what has been included and, in a manner, consistent with what is required by good faith. It as prescribed by law and pursuant to Article 282 of the Civil Transactions Code, that any damage to third party shall entail the guarantee to pay compensation even if the guarantee of compensation is not stipulated. It was established by the courts that the conclusion of error that entails the responsibility and the causal relationship between error, damage and compensation are all subject to the discretionary authority of the trial court. Based upon the foregoing, and since the error element committed by the appellants was available, which is a violation of the contractual liability arising from the contract, deed, of the lawsuit, because they did not hand over the sold item on the date specified in the contract. Therefore, the error element is available against them and the damage of appellee is proven because he was not permitted to benefit from the sale for about ten years and then it is necessary to affirm the appealed judgment based

upon on the above-mentioned grounds of. In addition, the appellants did not provide any justification for their failure to perform their contractual obligations.

Therefore, the appeal was filed on groundless reasons and the court rules to reject it and affirm the appealed sentence.

Whereas regarding expenses, the Court commits the two appellants to pay them pursuant to the text of Articles 133 and 168 of the Code of Civil Procedure

For These Reasons

The Court rules to accept the appeal in form and on the subject to reject it and affirm the contested judgment. The Court rules to oblige the two appellants to pay the legal expenses and five hundred dirhams in lieu of the attorney's fees.

Secretary
(signed)

Head of Chamber
(signed)