



WHAT HAPPENS WHEN THE BANK REJECTS THE MORTGAGE? FINANCING CONDITION IN A UNIFIED SALE AGREEMENT (FORM F); WHO BEARS THE RISK? HERE'S WHAT DUBAI COURTS SAY

SIGNIFICANCE OF JUDGMENT

In a recent Dubai judgment, the First Instance Court clarified a critical issue in real estate transactions governed by the Unified Sale Contract (Form F): what happens when a buyer fails to secure mortgage financing from the bank? The Court held that where financing is made an explicit condition under the sale agreement, the buyer's inability to obtain mortgage amounts to a breach of contractual obligations. The Court confirmed the seller's right to terminate the contract, retain the security deposit, and claim proven additional damages for direct and consequential losses. This decision underscores the binding nature of additional conditions written into Form F contracts and highlights the Courts' interpretation of financing contingencies.

IMPLICATIONS FOR BUYERS

For buyers, this judgment is a reminder that "subject to financing" clauses are not mere formalities. If you fail to obtain bank financing on a property you're purchasing by the agreed deadline stipulated in the contract, you may lose not only your security deposit but also face additional damages for the seller's losses. Courts will not absolve buyers by simply pointing to a bank's mortgage rejection - unless the Unified Sale Contract additional clause clearly and without any reasonable doubt, shifts that risk away from them.

IMPLICATIONS FOR SELLERS

Sellers are protected where the financing contingency is clear. The Court reaffirmed that if a buyer defaults on their financing obligations, the seller can:

1. Terminate the sale contract,
2. Retain the security deposit (as contractual liquidated damages), and,
3. Pursue additional claims for proven damages (loss of opportunity, delay in resale, etc.).



IMPLICATIONS FOR BROKERS

Brokers, often caught in the middle of such disputes, are not immune. The Court recognized a broker's entitlement to retain commission (as agreed in the sale and brokerage contract) when the buyer's breach frustrates the deal, provided the broker fulfilled their role in arranging the transaction. That said, brokers risk being drawn into litigation if their conduct or handling of escrow/deposit cheques is challenged. This emphasizes the importance of clear brokerage agreements and strict compliance with Dubai land department and RERA rules and regulations.

WHY WATERTIGHT DRAFTING MATTERS FROM THE START?

This case highlights the importance of carefully proof-reading Form F contracts and brokerage agreements and ensuring that any additional conditions are crystal clear, enforceable, and leave no ambiguity as to the consequences of non-performance and aligned with the court's practice and precedents to avoid you the cost of litigation. Buyers, sellers, and brokers alike should seek legal advice before entering into a deal and signing contracts. There is no one-size-fits-all in real estate – each transaction/deal has unique circumstances and risks based on the nature of the property and parties.

CONCLUSION

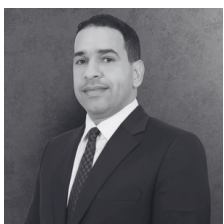
The judgment provides welcome clarity: a bank's rejection of mortgage financing does not automatically excuse the buyer from liability. Unless explicitly drafted otherwise, the buyer bears the risk. Sellers can enforce their contractual rights and claim damages, while brokers must tread carefully to protect their commission and avoid disputes.

HOW CAN WE HELP?

At BLK Partners, our real estate team has extensive track record in drafting, reviewing, and if needed, litigating Form F contracts. We ensure your agreements are watertight, advise on financing clauses, and represent sellers, buyers, and brokers in disputes arising from rejected mortgages or other breached conditions and mitigation of losses.

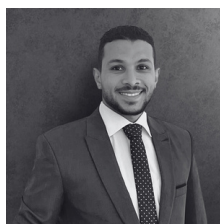
Stay tuned for the appeal and cassation court stages – we are creating a follow-up series to keep you posted on this topic, as we continue to receive frequent queries from clients facing similar situations.

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