

JUDGMENT SUMMARY

Neutral Citation	[2024] ADGMCFI 0011
Case Number	ADGMCFI-2023-248
Name of Case	Sohir Hussein Al Ahmar & Anor. v Mesab Limited (a Limited Liability Company incorporated in Masdar City, Commercial License No. MC11461) & Anor.
Judge	Justice William Stone SBS KC
Date Issued	29 July 2024
Catchwords	Breach of contract. Damages for late delivery of off-plan property. Covid pandemic as force majeure event. Damages for construction defects.
Cases Cited	Abu Dhabi Court of Cassation Judgment (Commercial No. 1189/2021) Abu Dhabi Court of Cassation Judgment (Commercial No. 1104/2021) Abu Dhabi Court of Cassation Judgment (Commercial No. 700/2009) Federal Supreme Court (Appeal No. 297 and 300/2003 (Judicial Year 23))
Legislation and Authorities Cited	Cabinet Resolution No. 41 of 2023 Federal Civil Transactions Law, Law No. 5 of 1985 (the "Civil Code") – Articles 246, 273(1), 282, 292, 293, 296 and 387 Cabinet Resolution No. 5 of 2021
Executive Summary	This judgment considered a dispute regarding delays and defects in an off-plan property unit purchased in July 2019. The Court found the defendant, the developer of the property, liable for extensive delay, though acknowledging a contractual extension period and the impact of the Covid pandemic as a 'delay event'. The judgment also considered the counterclaim filed by the defendant for connection and administration fees. The counterclaim for connection fees was mostly granted.
Overall Summary	Background This Abu Dhabi Global Market ("ADGM") Court of First Instance (Commercial & Civil Division) judgment concerned a dispute between Sohir Hussein Al Ahmar and Radwan Anas Radwan (the " Claimants "), who are husband and wife, and Mesab Limited and its local branch (together, " Mesab " or the " Defendants "), the developer of Park View

	<p>Tower (the “Tower”). The case arose from the Claimants' purchase of an off-plan unit (Unit 2502) in the Tower in July 2019. The core of the dispute involves extensive delays in the delivery of the unit and alleged construction defects. The proceedings were initially filed in the Abu Dhabi Courts but were transferred to the ADGM Courts due to the expansion of the ADGM's geographical territory to include Al Reem Island, where the unit is located, pursuant to Cabinet Resolution No. 41 of 2023. The case was tried without legal representation for either party. The Sale and Purchase Agreement (SPA) was governed by the laws in force in the Emirate of Abu Dhabi and relevant federal laws of the UAE.</p> <p>Analysis</p> <p>The Claimants sought substantial financial and non-financial relief for Mesab's alleged breach of the SPA due to delayed delivery and defects. Their claims were based on principles of UAE federal law, specifically citing articles of the Civil Code concerning compensation for breach of contract. Mesab defended the claims by arguing, among other things, that an exemption clause in the SPA precluded the claims, that a contractual clause permitted a 12-month extension of the completion date, that the Covid pandemic constituted a force majeure event excusing delay, and that problems with their Main Contractor were responsible. Mesab also filed a counterclaim for connection and administration fees.</p> <p>The Court rejected several of Mesab's defences. The exemption clause was deemed not to be an all-purpose exemption covering damages for delay. The issues with the Main Contractor were found to be Mesab's responsibility and not a defence against the Claimants. However, the Court accepted that the SPA allowed for a 12-month extension of the completion date, meaning the contractual breach for delay did not commence from the initial date of 30 September 2019 as argued by the Claimants. Furthermore, the Court found that the Covid pandemic was a significant 'delay event', noting the UAE Cabinet Resolution declaring an "emergency financial crisis" period, which effectively excused Mesab's delay until 31 July 2021.</p> <p>Based on these findings, the Court assessed the Claimants' monetary claims.</p> <ul style="list-style-type: none"> • For loss of use (lost rent), the Court calculated the loss based on the period from 1 August 2021 to 9 July 2023, applying a 60% discount for the loss of chance of renting the unit, awarding AED 188,700. • For higher prevailing interest rates due to delay, the Court estimated the Claimants' loss at AED 1,500 per month over a five-year period, awarding AED 90,000. • For loss of investment earnings, the Court awarded interest on the cash portion of the balance payment held by Mesab between February and July 2023, calculating it at a 5% deposit rate and awarding AED 18,100. • Claims for compensation for partial use and defects were rejected. • The Court awarded moral damages of AED 50,000 for the considerable mental anxiety and anguish suffered by the Claimants due to the delays and ongoing issues.
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	<p>Mesab's counterclaim for connection fees was largely accepted based on contractual clauses, but the administration fee portion was rejected. The Court granted the counterclaim in the rounded amount of AED 50,498.</p> <p>Conclusion</p> <p>The Court entered judgment in favour of the Claimants for their successful monetary claims, totalling AED 346,800 . This was set off against Mesab's successful counterclaim of AED 50,498. The net judgment amount awarded to the Claimants is AED 296,302, with interest at 5% per annum from the date of the Order. The Court also issued a non-financial order, requiring Mesab to implement the rectification works detailed in their Defects Report dated 20 April 2024, at their own cost, commencing within 28 days or by agreement. Finally, Mesab was ordered to pay the Claimants' costs of the proceedings.</p>
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This statement is not intended to be a substitute for the reasons of the Court or to be used in any later consideration of the Court's reasons.