

In the name of
His Highness Sheikh Mohamed bin Zayed Al Nahyan
President of the United Arab Emirates/ Ruler of the Emirate of Abu Dhabi

**COURT OF FIRST INSTANCE
COMMERCIAL AND CIVIL DIVISION
BETWEEN**

ALI OTHMAN A ALRAKBAN
Claimant

and

WEBRIDGE PROPERTIES LLC
Defendant

JUDGMENT OF JUSTICE WILLIAM STONE SBS KC



Neutral Citation:	[2026] ADGMCFI 0014
Before:	Justice William Stone SBS KC
Decision Date:	19 May 2026
Decision:	<ol style="list-style-type: none"> 1. The Defendant shall pay to the Claimant damages in lieu of rescission in the sum of AED 2,976,455, and interest on that amount at the rate of 5% per annum from the date of judgment herein until payment. 2. The Defendant's Counterclaim is dismissed. 3. There be a costs order <i>nisi</i>, that the Defendant shall pay 70% of the Claimant's costs of and occasioned by this Claim and Counterclaim, such costs to be assessed on the papers on the standard basis if not agreed, such order to become absolute absent any application on the part of either party to vary, with any such application to be filed within 14 days of the date hereof.
Hearing Date(s):	23 April and 4 May 2026
Date of Orders:	19 May 2026
Catchwords:	Off-Plan Sale and Purchase Agreement. Misrepresentation. Whether value added tax included in purchase price. Condition of property upon handover. Damages in lieu of rescission.
Legislation Cited:	<p><i>Abu Dhabi Law No. 3 of 2015</i></p> <p><i>Application of English Law Regulations 2015</i></p> <p><i>Executive Regulations of Federal Decree Law No. 8 of 2017</i></p> <p><i>Federal Decree Law No. 8 of 2017</i></p> <p><i>Off-Plan Development Regulations 2024</i></p>



	<p><i>Federal Law No. 5 of 1984 Concerning the Issuance of the Civil Transactions Law of the United Arab Emirates</i></p> <p><i>Misrepresentation Act 1967 (UK)</i></p> <p><i>Private International Law (Miscellaneous Provisions) Act 1995 (UK)</i></p>
Cases Cited:	<p><i>Alghussein Establishment v Eton College</i> [1988] 1 WLR 530</p> <p><i>Awad v 3AM Property Investment Company LLC & Anor</i> [2025] ADGMCFI 0003</p> <p><i>Cavendish Square Holdings BV v Makdessi</i> [2015] UKSC 67</p> <p><i>Credit Suisse Life (Bermuda) Ltd v Ivanishvili</i> [2025] 3 WLR 789</p> <p><i>Federal Properties Ltd - Sole Proprietorship LLC v Ibrahim</i> [2025] ADGMCFI 0013</p> <p><i>Interfoto Picture Library Ltd v Stiletto Visual Programmes Ltd</i> [1989] QB 433</p> <p><i>Marin & Anor v Akhras & Anor</i> [2025] ADGMCFI 0023</p> <p><i>Olley v Marlborough Court Hotel</i> [1949] 1 KB 532</p> <p><i>Parker v South Eastern Railway Company</i> [1877] 2 CPD 416</p> <p><i>Property Alliance Group Ltd v Royal Bank of Scotland Plc</i> [2018] 1 WLR 3529</p> <p><i>Spice Girls Ltd v Aprilia World Series BV</i> [2002] EWCA 15</p> <p><i>J Spurling Ltd v Bradshaw</i> [1956] 1 WLR 461</p>
Case Number:	ADGMCFI-2025-367



Parties and representation:	<p>For the Claimant</p> <p>Ali Alyousif of Obeid & Medawar Law Firm LLP</p> <p>For the Defendant</p> <p>Robert Sliwinski instructed by QAF Legal</p>
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JUDGMENT

Introduction

1. This is a case involving the off-plan purchase of a commercial unit, RS001 (the “**Unit**”), at the Al Maryah Vista 1 development on Al Maryah Island, in the Abu Dhabi Global Market (the “**ADGM**”).
2. The Claimant is a Saudi investor, who wished to buy the Unit in question, which had an adjacent outdoor terrace area (the “**Terrace Area**”), in order to open a coffee shop.
3. The Defendant is the developer of Al Maryah Vista 1, and the seller of this Unit.
4. An Off-Plan Sale and Purchase Agreement (the “**SPA**”) was entered into by the parties dated 28 October 2022, which followed an earlier Reservation Agreement.
5. The purchase price of the Unit was stated in the SPA to be AED 8,269,000 (the “**Purchase Price**”).
6. The agreed payment schedule for the Unit required the Claimant to make payment of a reservation payment, then 20 monthly instalments, before payment of a final sum of AED 5,292,545. After payment of the reservation fee and 16 instalments in normal course, a dispute arose as the payment of value added tax (“**VAT**”): it is this VAT dispute which provides the origin of the current proceedings.
7. A Building Completion Certificate was issued on 4 December 2024, and by 6 December 2024 the Defendant sent a “*Handover Notice*” to the Defendant with a request that payment be made for the outstanding lump sum.
8. This was followed by a further email requesting payment, and by 17 February 2025 the Defendant notified the Claimant that if further time elapsed it would take action to terminate the sale.
9. The Claimant did not pay the sum necessary to complete the purchase. He was dissatisfied. His complaints were, and remain, that there had been misrepresentations by



the Defendant as to the requirement to pay VAT on the Purchase Price, and further that he had been misled as to the permitted use of the Terrace Area.

10. Completion did not take place, and the parties remained at loggerheads. On 18 February 2025 the Defendant issued an official demand for the full outstanding payment for the Unit, requiring the remittance of AED 5,292,545 as the amount due on handover and requesting payment within 15 days of the letter, although curiously this official demand for payment cited the amount stated to be due under the SPA, and did not include any separate or additional sum for the disputed VAT, which the Defendant insists is also due on the purchase.
11. On 4 November 2025, the Claimant issued these proceedings in the Real Property Division of this Court, and despite the Claimant's requests to the ADGM Registration Authority (the "**ADGM RA**") to suspend action pending resolution of these proceedings, the off-plan sales agreement in respect of the Unit was deregistered by the ADGM RA, upon the Defendant's application, on 11 November 2025; the Claimant mounted no appeal against this action.
12. In these proceedings the Claimant, who has paid in instalments a proportion of the Purchase Price, claims return of the monies thus paid, and the Defendant, who ascribes the failure of the sale to the Claimant's refusal to pay the Purchase Price, has instituted a counterclaim filed on 19 January 2026 (the "**Counterclaim**"), which asserts penalties and other monies said to be due and owing consequent upon the sale.
13. This case earlier had involved interlocutory applications, by both Claimant and Defendant, with the latter asserting that this Court lacked jurisdiction to hear and determine this case. These various applications, on either side, were dismissed by Order with Reasons dated 30 December 2025.
14. This is the judgment consequent on the trial of this action which took place on 23 April 2026, in which the evidence of five witnesses was heard, and on 4 May 2026, which was convened for final submissions.
15. Notwithstanding the profusion of documents placed before the Court, of which but a small number were the subject of scrutiny, a considerable part of the factual background is undisputed, albeit some significant factual findings are required.

The evidence

16. Five witnesses gave *viva voce* evidence: the Claimant himself, Mr Alrakban, and four witnesses on behalf of the Defendant, namely Mr Mohamed Abdel Mosen Abu Ezzalah, Mr Tarek Morsi Hanafi, Mr Engineer Ahmed Siyam, and Mr Amr Ahmed Saber.
17. After argument, the Court disallowed a further witness statement of Mr Hani Lofty Salam Ahmed, the in-house legal consultant of the Defendant, who had no personal knowledge



of the events in question, the witness statement in question having been prepared for the earlier interlocutory proceedings. This witness statement was disallowed upon the like basis as had been an earlier 81 paragraph witness statement specifically prepared by Mr Ahmed for this trial, which the Court had denied permission to file on the basis of the Reasons set out pursuant to an Order dated 30 March 2026.

18. The testimony of each of the four witnesses who were called on behalf of the Defendant was of limited scope, relating only to the administrative part each witness had played in the sale process of the Unit in question, and in each case was devoid of any internal documentary support or reference. I mean no disrespect to each of the witnesses who were called when I say that their evidence did not add a great deal to the sum of knowledge about this failed sale and purchase transaction.
19. The main witness in this trial was the Claimant, Mr Alrakban, who was well informed about the detail of this case; in my view he attempted to give honest and frank evidence.
20. Mr Alrakban was in China attending the Canton Trade Fair and gave evidence on video link from Guangzhou, which occasionally resulted in the “freezing” of his sound and image, but which did not detract from the thrust of his evidence. Save for some matters of detail, a significant part of his account of events already is reflected within the case documents.

Governing law

21. There is a dispute about the law governing this sale and purchase transaction: the Claimant says that the law to be applied to this dispute is the law of the forum, that is the law applied in the ADGM Courts, whilst the Defendant says that it is onshore civil law that governs the parties’ dispute.
22. This is a matter which had arisen in argument at the interlocutory stage on the hearing of the Defendant’s jurisdictional objection, and revolves around what are referred to in this case as the “*General Conditions*”.
23. Clause 8 of the SPA, which was signed by the putative purchaser, Mr Alrakban, makes specific reference to these “*General Conditions*”, which are purportedly incorporated by such reference into the SPA. The opening paragraph of Clause 8 reads:

“I/We agree that it has read and fully understood each and all of the terms and conditions of this Agreement including the Particulars, the SPA General Conditions, the Disclosure Statement, the Constitutional Documents and the schedules and appendices to it and has had opportunity to obtain independent, professional, legal and financial advice on the Buyer’s rights and obligations under this Agreement and the transaction contemplated by this Agreement...”



24. The Defendant maintains that the governing law issue is governed by Clause 21 of these Conditions, which is intitled “*General Terms and Conditions of the SPA for the Marya Vista 1 Project*”, and which provides that “*This Agreement shall be governed by and construed in accordance with the laws of the Emirate of Abu Dhabi and the Federal Laws of the UAE as applied in the Emirate of Abu Dhabi*”.
25. The difficulty, however, is that the Claimant says that at no time was he ever shown this document, nor was it referenced in the sale process: his evidence, which I accept as true, is that the only document he ever was given by the Defendant was the SPA; he says, and again I accept, that throughout this transaction he repeatedly had requested from the Defendant a comprehensive signed contract that set out the obligations of both parties in relation to the handover of the property, including specifications, finishing standards and VAT treatment. It is also the Claimant’s evidence, which I accept, that the General Conditions were eventually produced to him only during the course of these proceedings, and at no time beforehand.
26. I further accept the Claimant’s submission that under established principles of incorporation, a term contained in a separate unsigned document is binding only when reasonable steps are taken to bring it to the attention of the other party before or at the time of contracting (see *Parker v South Eastern Railway Company* [1877] 2 CPD 416; *Olley v Marlborough Court Hotel* [1949] 1 KB 532). The position is *a fortiori* in an instance of an onerous term, wherein the notice requirement is correspondingly greater: see *J Spurling Ltd v Bradshaw* [1956] 1 WLR 461 and *Interfoto Picture Library Ltd v Stiletto Visual Programmes Ltd* [1989] QB 433.
27. The Claimant also repeats a submission made at the hearing of the jurisdiction application, which is that in various instances these General Conditions “*are structurally and substantively incompatible with the SPA*”, in particular that the General Conditions prescribe construction milestone-based payments, whilst the SPA prescribes fixed calendar date instalments, and that after comparison of the respective provisions conclude that these General Conditions represent “*a generic unadapted template that was never incorporated into the specific agreement concluded between these parties*”.
28. There is force in this contention, and (as was the case at the time of the jurisdictional debate) I entertain substantial doubt as to the relationship between these General Conditions and the SPA. For reasons which never have been explained, at no time were these Conditions sent to the Claimant, even at a time when it was abundantly clear that the payment of VAT on this property purchase was in stark dispute.
29. In this context I also note that Mr Sliwinski suggested in submission that he could, in effect, “*blue pencil*” the General Conditions, and that his client could take advantage of some provisions and not others. I reject this contention, and hold that the General Conditions



either apply or they do not: this is not a contractual smorgasbord, wherein advantage can be taken of some provisions at the expense of others.

30. These General Conditions loom large in various aspects of the argument in this case, and for present purposes I proceed on the basis, and so find, that the provisions in the General Conditions do not bind. These were never sighted by the Claimant notwithstanding requests made by him for all relevant documentation to be made available by the Defendant, and that the SPA signed by the Claimant is in effect a standalone document in this transaction. I regard the SPA as clearly superseding the initial Reservation Agreement, which document was signed by the Claimant when the Unit was reserved and prior to execution of the SPA: nothing of substance arises from the Reservation Agreement which, whilst undoubtedly part of the overall factual matrix, was little referenced in argument during this trial.
31. The SPA also appears on its face to be an unadapted template designed to reference sales of residential units when the Unit actually sold in this case is not residential, although it is described as “*Commercial Retail shop + Store*”. The Claimant argued, with some justification, that if the draftsman failed to adapt the word “*Residential*” in Clause 4 of the SPA (or in subsequent correspondence), there is no reason to suppose that the reference to “*General Conditions*” in Clause 8 of the SPA reflects a deliberate incorporation as opposed to a systemic failure to adapt its standard documentation to the concluded transaction.
32. On the basis that I reject the applicability of the General Conditions and that the sole contractual document in the present case is the SPA, there is no guidance therein on choice of governing law. The nearest provision to a governing law provision is in Clause 10 of the SPA, entitled “*Compliance with Regulations*” and which reads: “*Both parties confirm that the SPA is subject to all applicable Real Estate Laws, namely the stipulation of Law 03/2015*”.
33. Abu Dhabi Law No. 3 of 2015 has not been produced, referred to, or relied on in submissions, but the Court has some familiarity with this legislation: see, for example, *Awad v 3AM Property Investment Company LLC & Anor* [2025] ADGMCFI 0003; *Federal Properties Ltd - Sole Proprietorship LLC v Ibrahim* [2025] ADGMCFI 0013; and *Marin & Anor v Akhras & Anor* [2025] ADGMCFI 0023. Essentially this statute is an omnibus general law governing the development and sale of onshore real estate in the Emirate of Abu Dhabi. However, in making reference to this law in the SPA, I find that there is therein no express choice of the law of the Emirate of Abu Dhabi as the governing law of this dispute. That law contains no substantive choice of law elements, nor does anything in this Abu Dhabi Law No. 3 of 2015 purport to exclude ADGM law from applying to a dispute concerning real estate located on Al Maryah Island in the ADGM.



34. Mr Sliwinski, who appears for the Defendant, essentially repeated his approach at his client's earlier challenge to the jurisdiction, and urged the Court to apply onshore laws, in particular Articles 185-192 of Federal Law No. 5 of 1984 Concerning the Issuance of the Civil Transactions Law of the United Arab Emirates (the "**UAE Civil Code**"), for resolution of the substantive issues in this case.
35. The Claimant argues that as the result of the earlier jurisdiction application the Defendant is estopped from repeating this submission: it argues that the Defendant invoked the ADGM Off-Plan Development Regulations 2024 to deregister the property, relied throughout on the processes of the ADGM RA, whilst its Counterclaim accepts ADGM jurisdiction by specific reference to this Court's Order of 30 December 2025 dismissing the Defendant's challenge to the jurisdiction. Whilst I do not need to go as far as finding an estoppel, I agree with the Claimant to the extent that it is at the least surprising that continuation of this differing approach to governing law was not flagged to the Court at the case management conference held in this case.
36. In the event, notwithstanding Mr Sliwinski's submission on the issue, the Court remains unconvinced that in this case provisions of the UAE Civil Code supplants the law of the forum: the cause of action relied upon by the Claimant is in tort, this alleged tort occurred in ADGM, and thus by application of the *lex loci delicti commissi*, the legal term that translates to "*the law of the place where the wrong was committed*", I apply English law to resolve the current dispute between the parties.

Claimant's case

37. The Claimant seeks redress against the Defendant on the basis of the tort of negligent misrepresentation under the Misrepresentation Act 1967, whereby he seeks rescission of the SPA, alternatively, if rescission is not possible, damages in lieu, such damage to represent the monies he had paid as the result of embarking on this transaction.
38. In this connection, the Claimant pleads two separate representations which he alleges that were made to him, and upon which he relied: these are representations regarding
 - a. payment of VAT on the Purchase Price; and
 - b. usage (and "*as built*" condition) of the Unit he wished to buy for the establishment of a coffee shop.
39. None of the four witnesses called by the Defendant, namely Mr Saber, Mr Ezzalah, Mr Hanafi and Engineer Siyam, had any involvement with this case at the time of execution of the SPA, and had contact with the Claimant only in February 2025 at the time when the building had been completed and handover procedures were taking place.
40. I take the issues in turn.



(i) *Value added tax*

41. Mr Alrakban is clearly an experienced investor in real estate, and in fact also had purchased, without issue, one of the residential units within this new Al Maryah Vista 1 development as an investment property. Happily his investment in this residential unit (which did not attract payment of VAT) was accomplished without dispute.
42. It is fair to say that in his evidence Mr Alrakban went out of his way to say that he fully understood the concept of VAT – it would have been surprising if he had not, given his extensive property investment experience – and stressed that in the present case he would have paid this tax had he believed that he was contractually required to do so. To the contrary, however, his case is that he had not been so required, since there was no reference to the payment of VAT on the face of the SPA, and that when the issue specifically was raised during the instalment payment process, resulting in his objection, this issue had immediately been withdrawn by the Defendant upon this objection.
43. It is ironic that if the General Conditions had been produced by the Defendant for inspection by the Claimant, which it is accepted by Mr Sliwinski that they were not, then Mr Alrakban would have been made aware of Clause 18.17 thereof, which provided that “[a]ny amount or value paid or given for taxable supplies of goods or services under or in connection with the Agreement is to be treated as exclusive of VAT” and that the recipient of any such supply “must, in addition to the amount of value paid or given for the supply, pay to the supplier an amount equal to any VAT which is chargeable in respect of the supply in question” by the later of the day on which the amount in value for the supply is paid or given and receipt of a proper VAT invoice.
44. A further oddity is that when the incipient VAT dispute was first flagged, with the Defendant purporting to arrogate an instalment payment towards a VAT liability, even then the General Conditions, and in particular Clause 18.17, were not brought to the attention of the Claimant, whilst none of the four witnesses called by the Defendant gave any evidence in relation to these General Conditions. This is particularly surprising given that when it became clear that VAT was going to be a problem, months of correspondence went by without the Defendant citing Clause 18.17 or referring to the General Conditions in a single letter, email, or internal memorandum, all of which leads the Claimant to submit, with justification, that if indeed this was a document upon which the Defendant was relying, and wherein lay a contractual term in its favour, it is curious that the Defendant failed to mention it for a period of four months.
45. There is little doubt, and I so find, that in the prevailing circumstances the Defendant developer by its conduct represented to Mr Alrakban that payment of VAT was not required by him, and that in the circumstances it was reasonable for Mr Alrakban to have relied on such representation, as I accept that he did, and further had assumed (as he did) that VAT



already was in the price which on the face of the SPA he was being asked to pay for the Unit being purchased.

46. The Claimant's uncontradicted evidence was that at the time of contracting the final purchase price for the Unit he was purchasing was specified at AED 8,269,000, and that this figure bore no qualification on its face, and that he therefore concluded that this sum was inclusive of any expenses, costs and taxes relevant to the purchase, including VAT.
47. He also said, and I accept, that at no point during the negotiations for sale or at the time of execution of the SPA did the Defendant give any indication that VAT would be added to the agreed consideration, nor did the SPA contain any clause suggesting that the instalments to be paid, nor the final handover payment, were exclusive of VAT. He stated that this was a representation that he had relied on in good faith when entering into the SPA, and that he had made the contractual instalment payments accordingly.
48. Mr Alrakban referenced payment of these instalment payments in support of his position. He said that what had occurred was that in total he had paid 19 designated instalments by bank transfer pursuant to the SPA in the period between August 2022 and January 2024, and noted that across 15 instalment payments over approximately 18 months, at no point was VAT charged by the Defendant: in fact, the customer statement of account issued by the Defendant on 7 June 2024 contains a VAT column for every instalment, and every entry over that period shows VAT as zero, thus reinforcing and confirming to the Claimant that no VAT was separately payable.
49. Mr Alrakban stated that the current VAT dispute first had reared its head was on payment of the 16th instalment of AED 144,035, due on 30 December 2023, which he had paid in normal course, but on this occasion the receipt the Claimant received from the Defendant purported to allocate the entire instalment towards an outstanding VAT liability on the Purchase Price, rather than crediting it towards payment of the stated price.
50. His evidence is that on 20 February 2024, he received two emails from the Defendant stating that the 16th and 17th instalments were overdue, and the second stated the final handover price to be AED 5,788,685, which deviated from the price on the face of the SPA and included VAT: this, he noted, was the first occasion on which VAT had been raised or discussed between the parties, and was wholly inconsistent with the entirety of the prior course of dealing.
51. He said that he replied on the same date, affirming that the 16th instalment had been paid on time, and observing that the Defendant had delayed issuing the corresponding receipt by over a month and then had allocated the payment towards VAT; accordingly he requested correction of the receipt and that all records accurately reflected the proper allocation of payment.



52. The history of events is that on 9 March 2024, Mr Alrakban sent a follow-up email, noting that a corrected receipt for instalments as paid still had not been issued, stating that this was unacceptable and stipulating a three day deadline to rectify the records to enable payment to resume.
53. The Claimant then had a meeting with the Defendant’s collections team on 7 June 2024, at which he insisted that the receipts be corrected to reflect payment of the instalments, not VAT. This course was agreed by the Defendant: a replacement receipt was duly issued for the 16th instalment, and was issued following specific internal approval by the Defendant’s representative, Mr Omer, the receipt specifically stating that it was issued “*due to VAT reversal*”. Mr Alrakban says that he understood from this that the Defendant had accepted, at a management level, that VAT should not have been charged to him. He also says that he resumed payments immediately, in reliance on his position that the price was inclusive of VAT.
54. His case is that if VAT had been applicable to the transaction, it should have been stated in the SPA (which it was not) and should have been charged from the outset on each instalment (which it was not), and that since no VAT was mentioned in the SPA, nor during the sale negotiations, nor charged during the initial 15 instalments as by then were paid, he was satisfied that the price as stated was inclusive of VAT, and that any responsibility for VAT remission to the tax authority rested with the Defendant. I accept this evidence.
55. The Defendant pleads that the Claimant always was fully aware and understood that the agreed sale price excluded VAT, and that the receipts were reversed “*based on the Claimant’s request to defer the payment of VAT at the end of the payment schedule.*”
56. The suggestion that the Claimant “*always was fully aware*” of the necessity for VAT on the stated price is a bold defence, for which there is no evidence, since none of the witnesses called by the Defendant asserted that this was the case, nor did any of them have any contact with Mr Alrakban until late February 2024, when the building had been completed and handover was taking place; in fact the evidence on the point is all the other way. Nor is the “*request to defer*” allegation made good: the undisputed evidence is that the VAT purportedly arrogated to the 16th instalment payment was reversed consequent on the Claimant’s apparently vociferous objection that VAT was not payable by him at all.
57. With the benefit of hindsight we now know that payment of VAT was the obstacle on which purchase of this Unit foundered: the Claimant did not pay the amended price which purported to include the VAT element of AED 413,450, and the Defendant insisted that unless VAT was paid the transaction could not be completed. Thus there was an impasse, and subsequently the Defendant terminated the contract and requested the ADGM RA to de-register the off-plan SPA, which it did, notwithstanding Mr Alrakban’s email request to the ADGM RA to delay the process pending Court resolution of this dispute.



58. The Court accepts the truth of the evidence of Mr Alrakban as to the sequence of events regarding VAT, and finds as a fact that there was no mention whatever of VAT at the time of entry into the SPA on 28 October 2022 until purported arrogation of the 16th payment instalment to VAT on 20 February 2024.
59. In context of the VAT discussion three other factual aspects merit brief mention:
- a. first, that contemporary WhatsApp messages sent by the Defendant's own collection officer, Mr Amr Medhat Abdelazim, who handled Mr Alrakban's account from 2022 until the end of 2024, to the Claimant on 5 January 2024 in which he stated that the Defendant's sales agent, Ms Halima, who sold the Unit to the Claimant, "*should have told you about it*" (meaning the necessity to pay VAT on the stated price) and that "*I told them that it's not the client's fault that nobody mentioned this before*" serve to underscore that VAT payment never was disclosed to the Claimant at the time of purchase – I have not heard evidence from Ms Halima, who was not called, but it is evident, and I so find, that omission to cite payment of 5% VAT on the stated price of the Unit was, at the very least, a negligent omission;
 - b. second, that an email dated 9 March 2024 and sent by Mr Alrakban to the Defendant stating that "*[a]ny other issues including VAT can be discussed after paying all scheduled payments according to contract agreement as I informed you earlier*" – which the Defendant characterises as constituting belated acceptance by the Claimant of the necessity to pay VAT – does not in my view amount to acceptance on the part of Mr Alrakban that VAT constituted a separate monetary liability, and is no more than recognition by the Claimant of an unresolved dispute; and
 - c. third, I agree that the Claimant's email dated 4 September 2025 to the ADGM RA (correspondence wherein he requested that no action be taken to de-register sale of this Unit pending decision in the instant case) and in which he stated that he would be "*happy to pay VAT if the authority advises me to do so*" does not amount to an admission of contractual liability, but is the language of a person seeking regulatory guidance: the sentiment as expressed in this email is precisely the sentiment that Mr Alrakban expressed to the Court during the course of his evidence.
60. On behalf of the Claimant, it has been submitted that under the Federal Decree Law No. 8 of 2017 (the "**VAT Law**"), if the Purchase Price was exclusive of VAT and the Claimant was liable to pay it separately, the Defendant was obliged to issue a tax invoice showing the VAT component against every instalment from August 2022 onwards; yet the fact is that it did not issue a single tax invoice across nineteen payments over a period of 18 months. The Claimant submitted that a party that collects so many payments absent issuing tax documentation required by the law to be produced if VAT is separately chargeable must mean either that the Defendant was in breach of its statutory obligations, or was treating



the price as inclusive and accounting for VAT out of gross receipts: which situation it is in this case is not apparent on the face of the Defendant's evidence.

61. Neither party made submissions on the specific provisions of the VAT Law. However, on brief review of that law, it appears that advertised or displayed prices for taxable goods and services must generally be inclusive of VAT, with specific exceptions determined by the "Executive Regulations" of that law. Relevantly, Article 38 states as follows:

"Article (38) Tax-Inclusive Prices

The declared prices shall include the tax in case of the taxable supplies. The Executive Regulations of this Decree-Law shall determine the cases where prices do not include the tax."

This principle is further elucidated in Article 27 of the Executive Regulations of the VAT Law: Article 27(1) establishes a default rule that published prices for taxable supplies shall be inclusive of tax, subject to an exception in Article 27(2), which permits a taxable person to declare prices as being exclusive of tax in two situations (export supply and where the customer is a "Registrant", as opposed to an individual purchaser), neither of which apply in the present case. And even if the exception had been available, Article 27(2) requires a positive declaration that the price is exclusive of tax, whilst Article 27(3) of the Executive Regulations provides that the price must be "clearly identified" as being exclusive of tax.

62. It follows, therefore, that absent an appropriate declaration, the Article 27(1) default rule applies, the consequence being that the amount due from the Claimant at handover was AED 5,292,545, which was the figure stated in the Defendant's own Handover Notice and Demand letter, and the figure tendered by the Claimant in the form of the manager's cheque. It also follows, as the Claimant has pointed out, that if the amount tendered was the amount owed, the termination of the SPA was not for non-payment of a contractual debt, but, consequent upon the Defendant's insistence upon payment of an additional sum in VAT, it was for non-payment of a sum the Defendant had no contractual right to demand, so that even if no actionable representation in terms of VAT could be established, the statutory default position independently resolves the issue.
63. It is also established law that a representation may be made by conduct (see *Spice Girls Ltd v Aprilia World Series BV* [2002] EWCA 15, which was a case in which a s. 2(1) representation arose by continued participation in a transaction), and the accepted test, as laid down by the Court of Appeal in *Property Alliance Group Ltd v Royal Bank of Scotland Plc* [2018] 1 WLR 3529, at [128] and [132] is whether a reasonable representee would naturally assume that the true state of facts did not exist and that, if it did, he would necessarily have been informed. It is also clear that a representation may operate on the Claimant's mind through assumptions induced by the representor's conduct, and that



conscious awareness of the specific representation is not required for reliance: see *Credit Suisse Life (Bermuda) Ltd v Ivanishvili* [2025] 3 WLR 789, at [174]-[176].

64. In light of the position under the VAT Law and the legal authorities, I agree with and accept the Claimant's submission that when presented with a contract that stated a specific price of AED 8,269,000 for purchase of the Unit, which contract was silent as to VAT and expressly allocates other costs to the buyer, this represented to the Claimant that no VAT was payable. I accept that this representation was relied on by the Claimant, and that it induced the Claimant into proceeding with the SPA.
65. The existence of that representation is confirmed by the Defendant's post-contractual conduct; the Claimant, as a reasonable buyer who thereafter received fifteen zero-VAT invoices, a Customer Statement showing VAT as zero, a corrected receipt stating "VAT reversal", and a handover demand for payment for AED 5,292,545 containing no VAT component, would not unreasonably believe that the stated price in the SPA represented the total consideration, and in turn would have expected to have been informed at the time of contracting if an additional payment of AED 413,450 in VAT – the straw that broke the back of this sale – was payable.
66. Having considered the facts and the law, in my view the case is established in terms of this pleaded misrepresentation.
67. It also strikes me that this case could as easily (and more efficiently) have been mounted in simple breach of contract terms: given the plain terms of the SPA, and Claimant thereafter proffering, on 1 September 2025, a manager's cheque drawn on the Saudi National Bank in the sum of AED 5,292,545, representing the exact handover amount stated in the SPA and demanded by the Defendant in its handover notice, by its insistence upon the additional payment for VAT and by its action in applying to the ADGM RA for de-registration, the Defendant effectively repudiated the SPA and placed itself in contractual breach.
68. It follows that upon either basis – whether the Defendant is in contractual breach or is liable *qua* tortfeasor – the Claimant must succeed under this head, and that the Defendant cannot escape liability for what has occurred. I deal with the appropriate remedy later in this judgment.
69. However, the other misrepresentation arguments propounded by the Claimant fare less well.
 - (ii) *Use of the Terrace Area and Unit's condition at handover*
70. The second misrepresentation prayed in aid by the Claimant is the less clear-cut: it is in omnibus form, and concerns both the use and "as built" condition of the Terrace Area



abutting the Unit, which the Claimant intended to use for commercial purposes, in this instance, for establishment of a coffee shop.

71. The Claimant's pleaded case is that during negotiations and at the time of contracting for the purchase of this Unit it had been expressly represented that the Terrace Area formed part of the purchased premises and that the Unit would be delivered in a condition suitable for immediate commercial operation, but that upon inspection of the Unit as built that the Defendant had imposed restrictions on the use of the Terrace Area, had prohibited construction or modifications, and (pending payment) had sought to hand over the Unit in "*shell and core*" condition absent any finishing. The Claimant also alleged that the Defendant had failed to provide any contractual documentation or "*as-built*" drawings confirming the Claimant's rights regarding the Terrace Area nor the actual physical specifications of the Unit.
72. The main thrust of this misrepresentation complaint goes to the usage of the Terrace Area. In his evidence Mr Alrakban said that the Terrace Area had been "*a central reason*" for the purchase of this Unit, as he had intended to use it for outdoor seating for a coffee shop.
73. He says that he conducted a site investigation on 24 January 2025, at which time it was evident that the Unit was not in an unfinished state and not ready for handover, so much so that he had sent an email to the Defendant stating that final payment under the Agreement would become due once the Unit was ready for handover: in turn this led to a further dispute about delivery of the Unit in a "*shell and core*" condition absent finishing.
74. More pertinently, in the context of usage of the Terrace Area, Mr Alrakban says that during a further inspection on 24 February 2025 in the company of Engineer Ahmed Siam, the Defendant's construction director, he was informed verbally that a part of the area he had purchased, including the Terrace Area, was located outside the boundaries of the Unit, and that he would not be permitted to add this area to the shop or to carry out any construction work upon it, and stated that "*this was the first time I had been told of those restrictions*". Mr Alrakban also said that notwithstanding his multiple requests to obtain "*as built*" drawings of the Unit (which in turn was reflected in a contractual adjustment rate of AED 1,150 per square foot), he had no way of knowing whether the final area matched the projected usable area of 2,023 square feet.
75. In his brief Witness Statement prepared for this trial, Engineer Siyam accepts that Mr Alrakban raised objections regarding the finishing of the Unit, to which he had explained to the Claimant that as standard practice in the UAE all commercial units are delivered on a "*shell and core*" basis, but that he had made no reference to the usage issue.
76. When this was raised in his cross-examination, Engineer Siyam denied the representation attributed to him, and maintained that on the plan the Terrace Area indeed was available



to the Claimant to use as he wished, subject only to obtaining local authority permission for usage.

77. In his reply witness statements dated 23 March 2026, to which he affirmed the truth, Mr Alrakban does not dispute that in response to seeking confirmation whether the Terrace Area was “*related to my shop*”, Engineer Siyam had responded “*yes, as stated in the layout*”, but that Engineer Siyam had omitted to state that during the same walkthrough he had informed him that he would not be permitted to build anything on the external area, including the Terrace Area, and that no construction work could be carried out on it. Mr Al Rakban further states that this was the first time, over the two-year period commencing with the signing of the SPA, that anyone from the Defendant had communicated that the Terrace Area could not be used for its intended commercial purpose.
78. The Court does not doubt that a conversation (of which no contemporaneous note was made) took place between Mr Alrakban and Engineer Siyam, but I am unable to elevate this exchange to the status of an actionable misrepresentation biting upon the rights and obligations under this contract, and do not do so; in fact, it is unclear how an alleged representation made at this late juncture can have anything to do with the Claimant’s decision to enter into the SPA in 2022.
79. If and in so far as Engineer Siyam – who struck me as an honest personable witness doing his best to help, not hinder – had stated that there were building restrictions, I am inclined to the view that what he had had in mind was along the lines of what he said in his cross-examination, namely that this was the Claimant’s area to use subject to local regulatory authority permission(s), a sentiment that in my view accords with reality and common sense, since clearly local government would have its own regulations and demands for any commercial structure to be established in that Terrace Area to serve this newly-built residential development. Indeed, during cross examination, Mr Alrakban and Mr Sliwinski found common ground by agreeing that the ability to erect temporary structures and use temporary air conditioning on the Terrace Area would fully satisfy the Claimant’s commercial needs. In that light, I do not accept Mr Alrakban’s position that Engineer Siyam told him the opposite – that he could not build any structure or cover on the Terrace Area – during the February 2024 site visit.
80. And further and in any event, I am able to discern no reliance upon what Siyam is alleged to have said, and no causative loss.
81. On the collateral “*shell and core*” issue, I do not consider that any representation argument gets off the ground, if indeed this issue was intended to form part of the purported representation argument: I do not consider that the on-site conversation between the Claimant and Engineer Siyam, and later with Mr Hanafi, constitutes cogent evidence of the representation pleaded, and certainly there is no question of any such representation being made at the time of entry into the SPA.



82. Further, in the SPA, which the Claimant asserts to be the operative document in this transaction, there was no reference to the finishing or completed nature of the Unit in issue, although Mr Alrakban says that the description “*Commercial Retail shop + Store*” to him connoted a completed retail unit.
83. I accept that what he had found on his inspection on 24 January 2025 was bare concrete flooring, unfinished plaster wall, exposed electrical wiring and fire suppression pipework, and construction debris left over from the Unit’s apparent use as a construction storage area. No ceiling, flooring or wall finishes had been installed, and the Unit was unsuitable for handover as commercial real estate premises: he said that on 17 February 2025 he had emailed the Defendant stating that the “*shell and core*” condition never had been communicated and was not in the contract, and requested a meeting to resolve the issue.
84. I have no doubt that his description of what he saw on 24 January 2025 is correct, indeed the available photographs are confirmatory.
85. Equally, I have no doubt but that, as another of the Defendant’s witnesses, Mr Tarek Hanafi, said in evidence, that the poor condition of the Unit in January 2025 was subsequently rectified to the normal “*shell and core*” delivery condition (which I apprehend to be bare but clean and acceptable concrete walls, absent finishing) by May 2025, which was Mr Hanafi’s evidence in cross-examination.
86. I am unable to accept in the circumstances of this case that the “*shell and core*” element of this case gets the Claimant home in terms of any actionable misrepresentation. I note also that Mr Hanafi, who was in charge of the Defendant’s handover department, and had seen Mr Alrakban in that capacity, that the thrust of Mr Alrakban’s concern expressed to him had been about VAT, and that he had raised no objection about “*shell and core*” delivery.
87. There is no need in the circumstances to decide this minor factual conflict, given my view that “*shell and core*” is an aspect of this case which in my view is more prejudicial than probative.
88. The short point, it seems to me, is that, as might be anticipated in instances of particular potential usage, there was within the SPA neither “*shell and core*” representation nor representation as to fit-out, and that the “*shell and core*” issue emerged only on handover: I so find.
89. It does not greatly matter, but I also accept Mr Hanafi’s evidence that although at the time of the January 2025 inspection this Unit was not prepared for handover, it did not remain in its initial problematic state Mr Alrakban described, and that it was in a ready state by May 2025. Further, although Mr Alrakban did not ultimately take the Unit due to the overarching VAT dispute, I also accept on the evidence that “*shell and core*” does in fact represent the



usual manner of presentation in the UAE for commercial premises absent specific agreement to the contrary: this strikes me as making practical good sense, since each commercial establishment will have its own particular fit-out requirements. I accept Mr Hanafi's explanation of this point in cross-examination: "*maybe [the purchaser] will have some modification, he has his own design. So, shell and core, that we hand [over]... without design, without finishing.*"

Conclusion on the Claimant's case in misrepresentation

90. It follows from the foregoing that in light of the way in which this matter is pleaded, in my judgment the sole representation which is established to the Court's satisfaction is the representation by conduct regarding the payment of VAT.
91. Throughout this case, and in the evidence called at trial by the Defendant, much has been said, but there has been no explanation of why VAT was never mentioned in the SPA, why 19 invoices were issued absent a VAT component, and why the Defendant's own management approved a "VAT reversal" in contrast to a deferment. It follows that the Defendant has not begun to discharge the burden upon it under section 2(1) of the Misrepresentation Act 1967.
92. In my view the other representation (or representations) as alleged is/are rejected as a matter of fact, and so as a matter of law such additional actionable representations have not been established.

The Defendant's Counterclaim

93. In addition to taking issue with the Claimant's case on the question of the payability of VAT, the Defendant has mounted a Counterclaim in the pleaded sum of USD 775,021.71.
94. The Defendant seeks declaratory relief that the SPA was validly terminated due to the Claimant's "*material breach*" and in addition seeks specific sums of: (i) the agreed fee upon termination for non-compliance with financial obligations, being 30% of the Purchase Price of AED 8,269,000, amounting to AED 2,480,700, alternatively the agreed termination fee for the Claimant's decision to terminate the SPA, which is 25% of the stated Purchase Price of AED 8,269,000, amounting to AED 2,067,250; (ii) Administration Fees of AED 10,000; and (iii) a "*commission amount*" paid to third parties of AED 355,567.
95. In light of my earlier conclusions, I am unable to accept that the Defendant should prevail on its Counterclaim, which is dismissed. In the Court's view, the Defendant repudiated the contract by declining the Claimant's proffered cheque in the sum stated on the SPA and in seeking de-registration with the ADGM RA, and thus there is no foundational basis for the Counterclaim as now made.



96. A party cannot rely upon its own breach to obtain a benefit thereunder: see *Alghussein Establishment v Eton College* [1988] 1 WLR 530, Lord Jauncey stating (at 594B-D) that:

“... a party who seeks to obtain a benefit under a continuing contract on account of his breach is just as much taking advantage of his own wrong as is a party who relies on his breach to avoid a contract and thereby escape his obligations”.

As the Claimant suggests, in this case the Defendant’s termination depends on the very non-payment its own prior conduct induced.

97. Accordingly, there can be no declaratory relief in the terms sought, nor of the sums additionally sought.
98. It is odd that the Defendant appears to take the position that, having declined to complete the sale of the Unit for the price stated in the SPA, that it now should retain the Unit, which remains available for sale, retain all the payments thus far made by the Claimant, in the sum of AED 2,976,455, and in addition through the agency of Clause 9 of the SPA, seek recover a further sum of in excess of AED 2 million in the form of a penalty.
99. Even had there been an analytical justification for the claim to 25% (or 30%) of the Purchase Price, the Court would have held that the monies claimed pursuant to Clause 9 of the SPA amount to an unenforceable penalty: see *Cavendish Square Holdings BV v Makdessi* [2015] UKSC 67 at para 32, wherein it was held that the relevant question is whether a secondary obligation imposes a detriment out of all proportion to any legitimate interest of the innocent party. In this instance the Claimant submitted, correctly in my view, that a deduction of at least 25% of the Purchase Price to be imposed on a buyer who already has paid almost AED 3 million in instalments, and who (on the Defendant’s case) is to forfeit the Unit completely, is wholly excessive and entirely disproportionate.

Claimant’s remedies

100. The Claimant asks the Court to rescind the SPA and order restitution of all sums paid, being AED 2,976,455.
101. I can see why rescission is sought, but I am by no means convinced that it remains available, given the lapse of time, and the actions taken in the interim, and although the Court has not been addressed on the point, it strikes me as difficult to maintain that there has been no affirmation of the SPA by the Claimant.
102. In the event, I do not think it greatly matters, since under s. 2(2) of the Misrepresentation Act 1967 damages in lieu of rescission can be awarded, and it is this course that the Court is minded to take. Accordingly, the measure of damage is the entirety of the sum paid in instalments toward the Purchase Price of the Unit, namely AED 2,976,455.



103. If and in so far as the case is considered from an alternative contractual standpoint, the sum of AED 2,976,455 was paid for a consideration which has wholly failed, and is returnable on this basis also, given the wrongful termination of the SPA by the Defendant developer, which in turn resulted in the non-delivery and subsequent de-registration of the Unit.

Order

104. It follows, therefore, that in my judgment the appropriate order to make is as follows:

- a. The Defendant shall pay to the Claimant damages in lieu of rescission in the sum of AED 2,976,455, and interest on that amount at the rate of 5% per annum from the date of judgment herein until payment.
- b. The Defendant's Counterclaim is dismissed.
- c. There be a costs order *nisi* that the Defendant shall pay 70% of the Claimant's costs of and occasioned by this Claim and Counterclaim, such costs to be assessed on the papers on the standard basis if not agreed, such order to become absolute absent any application on the part of either party to vary, with any such application to be filed within 14 days of the date hereof.



Issued by:

Linda Fitz-Alan
Registrar, ADGM Courts
19 May 2026