

INTERNATIONAL DISPUTE RESOLUTION
MOOT COMPETITION (idr. 2015)

13th – 16th February 2015



MOOT PROBLEM



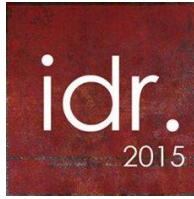
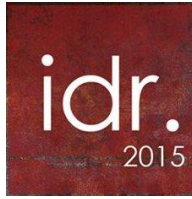


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11th June 2014

32 Maxwell Road

#02-01, Maxwell Chambers

Singapore 069115

APPLICATION FOR ARBITRATION

Dear Sir,

I represent Rubal & Co, and write to you to submit our Application for Arbitration against Rayan International. Enclosed please find a copy of my power of attorney to represent Rubal & Co. in this Arbitration.

The total value of the relief claimed in this Arbitration is AED 2,289,075 plus interest for the value of the Unit (as described in the facts below), a refund of the 2% transfer fee, and damages totaling AED 632,681 plus interest and costs. The requisite Arbitration fee has already been transferred to your account.

The Arbitration clause agreed between the parties provides that the seat of Arbitration will be Singapore, applying the SIAC Rules and that the Arbitration shall be conducted in English.

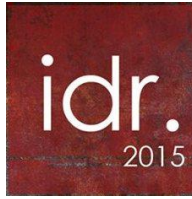
The Claimant appoints Mr. Feng as its party-appointed arbitrator.

If anything further is required, please do inform me.

Sincerely,

Ahmed Kazmi

Attached: Parties to Arbitration, Arbitration Clause



PARTIES TO THE ARBITRATION

Claimant

Rubal & Co. Ltd, a company incorporated under the laws of Pakistan Registered

Address: 42 F, Islamabad, Pakistan

Head of Company: Francis Adam, CEO

Tel: (+92) 2465 9283

Fax: (+92) 2466 9283

E-mail: contact@rubal&co.com

Respondent

Rayan International Pvt Ltd, a company incorporated under the laws of UAE Business address:

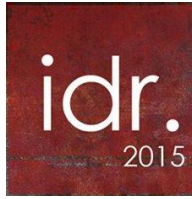
Sheikh Mohammed Bin Rashid Blvd, Downtown Dubai, United Arab Emirates

Head of Company: Azmat Saeed, CEO

Tel: (+92) 357 4298

Fax: (+92) 358 4298

E-mail: info@rayan.intl.com



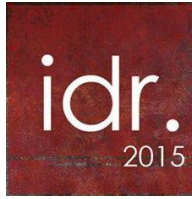
ARBITRATION CLAUSE

'Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre for the time being in force, which rules are deemed to be incorporated by reference in this clause.'

'The Tribunal shall consist of **3** arbitrator(s).'

'The language of the arbitration shall be **English**'.

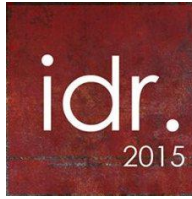
'The contract is governed by the laws of *Convention on International Sale of Goods (CISG), New York Convention and UNIDROIT Principles*'.



FACTS

The following facts are not in dispute between the Parties:

1. The Claimant entered into a Reservation Agreement dated 23 May 2010 with Mr. Rehman Abbas and Mr. Asad Khan (the “**Original Purchasers**”) for the purchase of a unit number AV 981 (the “**Unit**”), Parkside Villa in the Waterfront’s Veneto East development (the “**Property**”) The Claimant thereafter entered into a “Sale and Purchase Agreement” (the “**SPA**”) on 24 November 2010 with the Respondent for a total price of AED 9,038,300 (the “**Purchase Price**”). The Claimant paid the Original Purchasers 10% of the Purchase Price, being AED 903,830 and a premium of AED 632,681.
2. The following provisions of the SPA are of particular importance:
 1. **Agreement to Sell and Purchase**
The Seller agrees to sell the Property to the Buyer and the Buyer agrees to purchase the Property from the Seller for the Property Price stated in the Particulars. This Agreement shall comprise and be subject to the Particulars of Sale and Purchase, the Schedule of Installment Payments and the Terms and Conditions of Sale together with the Schedules all of which form and integral part of this Agreement.
 2. **Payment**
The Buyer shall pay each Installment Payment on or before the due date of the payment to the Seller by cheque in favour of, or by direct transfer to the Bank Account of, the Seller set out therein. All payments shall be paid in AED and any shortfall due to currency exchange rate differences, and all bankers charges made against the Seller related to the payment shall be paid or reimbursed by the Buyer.
 3. **Completion**
 - 3.1 *The Seller shall give not less than 30 days notice (the “**Completion Notice Period**”) of the date for completion of construction and handover of the Property (the “**Completion Notice**”).*
 - 3.2 *The Seller may by written notice to the Buyer extend or advance the Completion Date to such dates as advised by the Seller from time to time provided that the total period of such extensions or advancement (if any) shall, subject to any Force Majeure event, not exceed twelve (12) months.*
 - 3.3 *Provided the Buyer has fulfilled its payment obligations hereunder and is*



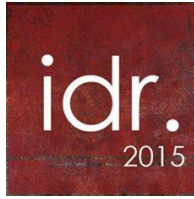
not otherwise in default under this Agreement the Seller shall provide vacant possession of the Property to the Buyer on the Completion Date.

4. Covenants and warranties of the Seller

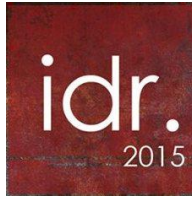
The Seller covenants to carry out the construction of the Property subject to the terms of this Agreement, and in accordance with the Specification and to deliver the Property to the Buyer on the Completion Date in a professionally finished condition, clean and ready for occupancy

3. It is important to note that the Completion Date under the SPA means the date set out in the Particulars and as per the Particulars of Sale and Purchase (which form an integral part of the SPA in accordance with Clause 1 set out above) the Completion Date was specified as January 2012.
4. According to Clause 2 of the SPA, payment for the Unit was to be made in accordance with the following Schedule of Instalment Payments:

% Purchase Price	Instalment Date
10%	Upon booking
15%	01-Aug-2010
15%	01-Dec-2010
20%	01-Apr-2011
15%	01-Aug-2011
15%	01-Dec-2011
10%	On Completion Date



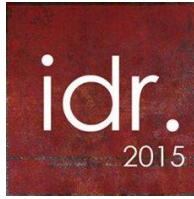
5. The Claimant made the first payment of 10% of the Purchase Price upon the signing of the Reservation Agreement and the second installment was paid by the Claimant on 25 September 2010. The Claimant had thus paid AED 2,284,075 to the Respondent by 23 November 2010 amounting to twenty five percent (25%) of the Purchase Price till date (the “**Paid Amount**”).
6. It is admitted that the Claimant did not pay the third installment due on 1 December 2010 and has not made any payments thereafter.



Claimant's Arguments

The Claimant's case is as follows:

- a. That the SPA requires the Respondent to complete construction of the Unit by January 2012.
- b. That under Clause 3.2. of the SPA, the Respondent could extend the delivery date of the Unit by 12 months to 31 January 2013 by giving written notice to the Claimant.
- c. That since no such notice was ever given to the Claimant by the Respondent, the Respondent remained liable to deliver the Unit by January 2012.
- d. That the Claimant believed he had terminated the SPA in mid-late January 2012.
- e. That without prejudice to his belief regarding termination in January 2012, the filing of a Request for Arbitration on 11 June 2014 "is tantamount to the giving of notice of the termination of the SPA as at that date."
- f. That Clause 16 of the SPA provides that the Claimant may terminate the SPA if the Claimant has fulfilled all of his payment obligations under the SPA and if the Respondent has failed to deliver the Unit by the Completion Date.
- g. That notwithstanding the Claimant's failure to make any payment after 23 November 2010 the Claimant was not in violation of his obligation to make payment because:
 - i. The Claimant had been informed on 23 November 2010 by Ms. Sucharita Basu (a former employee of the Respondent) that he was not required to make the third instalment in December 2010.
 - ii. That irrespective of Ms. Basu's communication, the Claimant was entitled to not make the December 2010 payment because even prior to December 2010 he had been told that the project was not proceeding as the Respondent had "effectively run out of money and had abandoned the site."
 - iii. That the Claimant was entitled to not make further payments because the



Respondent was unable to complete the Project within time.

Respondent's Arguments

The Respondent's position in regard to the above-noted arguments is as follows:

- a. That Ms. Basu never told the Claimant he could suspend payment.
- b. That even if Ms. Basu did make any such statement to the Claimant, she had no authority to do so.
- c. That even if Ms. Basu did make any such statement to the Claimant, that statement stands superseded by the express terms of the SPA and the payment schedule therein.
- d. That the Respondent did not suspend work on the Project.
- e. That the Respondent has not breached the SPA, inter alia, because the SPA does not obligate the Respondent to hand over the Unit within a particular period of time.
- f. That even if the Respondent has breached the SPA, the Claimant is not entitled to terminate the SPA because:
 - i. The SPA can only be terminated by the Claimant in accordance with Clause 16 thereof; and
 - ii. The SPA cannot be (and could not have been) terminated by the Claimant, because the Claimant has at all relevant times been in breach of its payment obligations.