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## TRYING TO RELY ON FORCE MAJEURE TO EXIT A REAL-ESTATE DEAL? THE DUBAI COURT OF CASSATION HAS NOW SETTLED THE ISSUE

Following the recent publication by our colleague on the legal framework governing force majeure in UAE real estate, we are seeing increasing interest from investors on how these principles are applied in practice, particularly in the context of Unified Contract of Sale (F) transactions in the Emirate of Dubai.

In this regard, we share a recent development in a case we successfully handled, where the Dubai Court of Cassation has now issued its judgment on 31 March 2026, confirming the position.

### **CASSATION COURT CONFIRMS: BUYER BEARS THE RISK**

The Court upheld the lower court judgments and confirmed that:

- A buyer's failure to obtain bank financing does not excuse performance
- Where financing is not drafted as a condition precedent, the buyer remains fully bound
- Failure to complete the transaction constitutes a contractual breach / withdrawal
- The seller is entitled to retain the deposit (subject to contractual structure)
- Brokerage commission remains payable where agreed

This reinforces what we consistently see in practice: Form F is binding, and courts will enforce it strictly.



### **FORCE MAJEURE: APPLICATION IN PRACTICE**

As outlined in the broader legal analysis recently published, force majeure under UAE law is a high-threshold doctrine. The Cassation Court's judgment provides a clear illustration of how strictly these principles are applied.

In this case, the buyers argued that the bank's refusal to grant financing based on internal banking considerations should be treated as force majeure.



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The Court rejected this argument.

It reaffirmed that force majeure only arises where strict legal conditions are met, including:

- The event must be exceptional and unforeseeable at the time of contracting
- It must be beyond the party's control
- It must be impossible to avoid or mitigate

These are cumulative and strictly assessed conditions. The inability to secure financing did not meet that threshold.



### WHAT THIS MEANS IN PRACTICE

We are seeing a clear increase in enquiries from buyers and sellers looking to rely on force majeure as a basis to step away from contractual obligations, particularly in real estate transactions.

This judgment provides decisive clarity and reflects the broader principles governing force majeure under UAE law.

**Most importantly: force majeure is not a fallback option for commercial or financial difficulty.**

In the context of UAE real estate transactions:

- Financing issues
- Changes in market position
- Commercial or investment considerations

will, in most cases, not meet the legal threshold of impossibility.

Parties who rely on force majeure without a proper legal basis risk weakening their position and exposing themselves to the full contractual consequences.

### KEY TAKEAWAY

This judgment, now confirmed at Cassation level, provides welcome clarity:

- Mortgage rejection does not shift risk unless clearly drafted



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- Unified Contract of Sale (F) contracts of sale remain binding agreements
- Force majeure is a narrow and strictly applied doctrine, not a general exit mechanism
- A buyer cannot rely on financing failure where their own financial position or actions contributed to the bank's rejection

#### HOW CAN WE HELP?

This forms part of our ongoing series on force majeure and real estate disputes in Dubai, where we continue to share practical insights based on both legal developments and recent case outcomes.

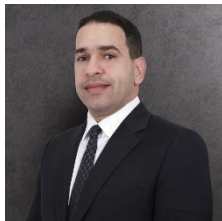
At BLK Partners, we advise buyers, sellers, and brokers on Form F transactions-from drafting and negotiation through to dispute resolution and litigation.

We remain fully operational and continue to support clients on a business-as-usual basis. If you require assistance in assessing your position or navigating a live transaction, please feel free to reach out.

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