Claim No. CFI 083/2018

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

In the name of His Highness Sheikh Mohammad Bin Rashid Al Maktoum, Ruler of Dubai

IN THE COURT OF FIRST INSTANCE

BETWEEN

SALEM DWELA

Claimant

and

DAMAC PARK TOWERS COMPANY LIMITED

Defendant

AMENDED JUDGMENT OF JUSTICE LORD ANGUS GLENNIE

Hearing : **5 December 2021**

Counsel : Mr. Michael Wheater for the Claimant
Mr. Waleed Dwela (McKenzie Friend) for the Defendant (as a litigant in person)

Judgment : **20 December 2021**

UPON the Claimant's claim to rescind the sale and purchase agreement dated 18 May 2010 entered into between it and the Defendant for the unit known as DFO/P7A/10 in the Damac Park Towers development in the DIFC, and for damages, on the basis of misrepresentation (the **"Claim"**)

AND UPON the Defendant's defense to the Claim and its counterclaim seeking specific performance for completion of the handover of the unit, as well as (a) service charges; (b) compound interest on the outstanding service charges; and (c) simple interest to date in for the service charges (the **"Counterclaim"**)

AND UPON reviewing the case documents and papers in respect of the Claim and the Counterclaim

AND UPON hearing counsel for the Claimant and the Defendant on 5 December 2021

IT IS HEREBY ORDERED THAT:

1. The Claimant's Claim is dismissed

2. The Defendant's second counterclaim is dismissed

3. The Defendant's first and third grounds of the Counterclaim are accepted with amendments

4. The Claimant shall within 28 days take all steps necessary under clauses 5.3 and 6.4 of the SPA to take possession of the unit and to cooperate in and sign the required documentation

5. The Claimant shall within 28 days pay the Defendant the sum of AED 370,000 by way of damages and interest to the date of judgment

6. The Claimant shall pay the Defendant's costs of the action, to be assessed by the Registrar on a standard basis if not agreed between the parties.

Issued by:
Nour Hineidi
Registrar
Date of Issue: 20 December 2021
At: 8:00am

JUDGMENT

1. On 18 May 2010 the claimant (**"Mr. Dwela"**) concluded a Sale and Purchase Agreement (**"SPA"**) with the defendant (**"Damac"**) under which Mr Dwela agreed to purchase and Damac agreed to sell a unit (the **"unit"**) on the seventh floor of Park Towers, a new development in the DIFC.

2. Mr. Dwela complains that he was misled about three particular matters: (a) the state of readiness of the development and the likely completion date; (b) the size of the unit; and (c) whether the unit had a "pool view". Although he paid the full price by July 2011, he has not completed the purchase of the unit and does not intend to do so. He seeks to rescind the contract and to recover the purchase price paid by him; and he claims other sums by way of damages. Damac deny that he has any justified grievance and insist that Mr. Dwela should complete the purchase and pay the sums due in respect of service charges from the date he should have completed.

3. Mr. Dwela brought proceedings against Damac in the DIFC Courts for breach of contract and misrepresentation. He issued his Claim Form on 19 December 2018. His claim for breach of contract was struck out by H.E. Justice Omar Al Muhairi (the "Judge") on 1 July 2020 on the ground that it was statute-barred under Article 123 of the DIFC Contract Law (DIFC Law No.6 of 2004). In a judgment issued on 7 March 2021 (in case CA-009-2020) the Court of Appeal upheld that decision. However the Court of Appeal also held, reversing the Judge's decision on this point, that Mr. Dwela had pleaded an arguable case of misrepresentation - for which the limitation period is 15 years, as set out in Art. 9(2) of DIFC Law of Obligations (DIFC Law No. 5 of 2005) (**"Law of Obligations"**) - giving rise to an entitlement to rescind the SPA and to recover damages. Although by a subsequent case management order dated 20 April 2021 Mr. Dwela was given an opportunity to plead a case of fraudulent misrepresentation, he has not done so. It was confirmed on Mr. Dwela's behalf at the commencement of the trial that he was not seeking to resurrect his breach of contract claim, nor was he seeking to advance any case of fraud. Mr. Dwela's claim for misrepresentation, without any allegation of fraud, is therefore his only claim before this court on the trial of this action; and the remainder of this judgment is confined to issues relating to that claim and Damac's counterclaim.

4. The background to the signing of the SPA was the proposed purchase by Mr. Dwela of a residential unit within DAMAC Heights at the Dubai Marina in 2008. It is Mr. Dwela's case, as set out in para. 5 of the Amended Particulars of Claim (**"AP/C"**), that by the end of 2008 construction of DAMAC Heights had been suspended and he was offered, among other options, an alternate unit in a different project at Park Towers. It is unnecessary to go into the merits of the argument about DAMAC Heights, but Mr. Dwela goes on in that paragraph to say this about the offer of the Park Towers unit:

> "The Claimant [i.e. Mr. Dwela] made it clear that he would not be interested in any property that was not complete. Accordingly, the Claimant was informed that Park Towers, DIFC was near completion with only some `snagging works' remaining and the completion was expected within three months. The specific unit offered was to be 2402.53 square feet, on the 7th Floor of the building, with a full pool view and two parking bays."

Mr. Dwela says that based on those representations he entered into the SPA on 18 May 2010.

5. The DIFC law concerning misrepresentation is to be found in Articles 29 and 30 of the DIFC Law of Obligations. Misrepresentation is defined in Article 29 and liability for misrepresentation is set out in Article 30. The effect of these provisions, so far as is relevant to this case, can be summarised in this way: Damac would be liable to Mr. Dwela for misrepresentation if (a) Damac made an incorrect statement of fact (past or present); (b) it did so in order to induce Mr. Dwela to enter into the SPA on the particular terms set out in the SPA; (c) by those means it did, in fact, induce Mr. Dwela to enter into the SPA on those terms; and (d) Mr. Dwela suffered loss as a result of entering into the contract.

6. Article 29 goes on in paras.(4)-(7) to explain certain specific points which are only of marginal relevance here, viz.: (4) that a representation may be made in writing (electronically or otherwise), orally, by implication, by conduct, by means of a mark, trade name, get-up, image, slogan, an advertising method or otherwise; (5) that non-disclosure cannot amount to a representation, unless the non-disclosure is a breach of a specific duty to disclose; (6) that a misrepresentation can consist of a representation which is true when made but thereafter becomes untrue before the contract is concluded; and (7) that a representation does not constitute a misrepresentation where the representor is doing no more than making a truthful statement of fact which he has a legitimate interest in making. I have some difficulty in understanding why this last point is included in the statutory provision, since by definition if the statement of fact is truthful, i.e. correct, it cannot in any event amount to a misrepresentation; but nothing turns on this for present purposes.

7. Perhaps of more relevance in the present case is how Article 29 deals with statements of opinion, as opposed to statements of fact. Article 29(2) makes it clear that a statement of opinion or law, unaccompanied by a representation of fact, cannot itself be a representation. Article 29(3) then states that a statement of opinion can only be a misrepresentation "if it is accompanied by a further incorrect representation, whether express or implied, such that the representee ... has reasonable grounds for believing that the opinion is true." I shall come back to deal with this provision in due course.

8. The recovery of damages for misrepresentation is governed by Part 3 of the DIFC Law of Damages and Remedies (DIFC Law No. 7 of 2005). Article 23 provides that breach of an obligation under the DIFC Law of Obligations - and this includes misrepresentation, which is governed by the DIFC Law of Obligations - gives the injured party a right to damages to compensate for the pecuniary and non-pecuniary losses sustained as a result of the breach. The right to damages can either be exclusive or in conjunction with other remedies. Article 24 provides that the injured party is entitled to full compensation for loss sustained as a result of the breach of the relevant obligation. The measure of damages is that sum of money which would put the injured party in the same position as he would have been in if he had not sustained the wrong for which he is to be compensated: see Article 25. Other Articles within Part 3 deal with matters such as certainty of loss, foreseeability, mitigation and the like. Part 4 sets out other remedies. Amongst "Other Orders" listed in Article 35(1), the court may make an order for restitution or for specific performance and/or "(g) any other order that the Court thinks fit". I see no reason why this should not, in the appropriate case, include an order for rescission.

9. It is perhaps worth noting that although clearly the provisions of DIFC law relating to misrepresentation are strongly influenced by English law, there are significant differences between them. One such difference is the absence of any specific reference to rescission as a remedy, though as I have indicated I do not regard rescission as necessarily excluded. Another difference is the lack of any distinction in terms of remedies depending on whether the misrepresentation is "innocent" (i.e. non-negligent) or negligent: c.f. sections 1 and 2 of the (English) Misrepresentation Act 1967. In England damages may be awarded for misrepresentation unless the person making the misrepresentation can disprove negligence - in other words damages cannot be awarded for innocent (non-negligent misrepresentation). By contrast, damages are available in the DIFC in both cases.

10. I shall come back to consider the legal issues arising in the present case after summarising the evidence and setting out my findings on the facts.

11. It is necessary first to set out some terms of the SPA. The Particulars, which form an integral part of the SPA, set out in paras.1 and 2 the names and relevant details of the Seller (Damac) and the Purchaser (Mr. Dwela). Para.3 identifies the relevant unit (DFO/P7A/10) and gives the "Total Area" as 2402.53 square feet. Para.8 states that the Purchase Price is AED 3,844,048.00, which includes two parking bays. Para.9 identifies the Permitted Use as "Office" - Mr. Dwela explained in his evidence (confirming what he said in his email of 12 January 2010) that by this stage he no longer required a residential unit there. Para.10 states that the Anticipated Completion Date is June 2011. Other relevant provisions include the following:

"1.1 Common Office Area means that part of the Common Property located on any particular floor in the Building which has only Office Units that is attributed only to the occupiers of the Office Unit(s) on that floor. Each Office Unit shall have right to a share of the Common Office Area on their particular floor on the basis of the net area of the Office Unit divided by the total net size of all Office Units on that floor.

...

"5.1 It is recorded that the Anticipated Completion Date represents the date upon which it is expected that the Completion Date will occur. Without prejudice to the Seller's rights pursuant to clause (16.1) [i.e. the Force Majeure clause], the Seller reserves the right to extend the Anticipated Completion Date by up to twelve (12) months.

...

"10.10 The Purchaser acknowledges and understands that the Total Area of the Unit as stated in section (3) of the Particulars is the net floor area of the Unit measured from the exterior faces of the exterior walls and from the centrelines of the common walls joining two Units and across internal walls. However, if the Permitted Use of the Unit is `office' then the Total Area of the Office Unit includes, for the purpose of calculation of the Purchase Price only, that part of the Common Office Area which is attributable to the Unit as described in clause (1.1) of this Agreement. Notwithstanding the foregoing, the Purchaser acknowledges and agrees that the area of the Unit being sold and registered at the Land Registry shall be the net area in all cases subject to the Applicable Laws.

...

"12 Variations

12.1 The Seller and the Master Developer may from time to time make such variations to the Master Plan and the Project Plan as may in the circumstances be necessary. Thus, while the Master Plan and the Project Plan have been prepared and are as accurate as possible, the Purchaser acknowledges that they are not yet final and adjustments to the final measurements of the Unit and Participation Quotas may need to be made. If the final measurement of the Unit is larger than the measurement represented to the Purchaser in this agreement, then the Purchase Price for the Property will be increased proportionately if the difference is more than three percent (3%). However, no adjustment to the Purchase Price shall be made if the final measurement of the Unit is larger and the difference is less than three percent (3%). If the final measurement of the Unit is smaller than the measurement represented to the Purchaser in this agreement, then the Purchase Price for the Property will be decreased if the difference is more than five percent (5%). However no adjustment to the Purchase Price should be made if the final measurement of the Unit is smaller and the difference is less than five percent (5%). In this case, the Purchaser will have no claim against the Seller for the deficiency and size of the Unit.

12.2 The Seller is at its sole discretion entitled to change, vary or modify the design, layout or location of the Unit . specifications pertaining to the Building, the number of floors in the Building and Units from the plans, . fixtures and specifications, sales brochures, models or otherwise that were disclosed to the purchaser at the time when this agreement was signed, all without notice or the consent of the purchaser, provided that substituted items and materials are of similar standard.

12.3 The Purchaser hereby consents to any changes, variations, modifications and substitutions, and agrees to comply with his obligations contained in this Agreement notwithstanding any of the changes, variations or modifications described above.

...

17.2 No variation of this Agreement shall be valid unless it is in writing and executed by each of the Parties or their authorized officers.

17.6 This Agreement constitutes the entire agreement between the Parties relating to the subject matter of this Agreement and supersedes all prior negotiations, agreements and understandings, whether oral or written, between the Parties with respect to the matters contained in this Agreement including but not limited to, representations made in the marketing material, sales brochures, models, view sets, showroom displays, photographs, videos, illustrations and revenue projections and financial statements made available to the Purchaser."

12. In para.4 of his first witness statement, Mr. Dwela confirmed what appears in para.5 of his AP/C (set out at para.4 above), i.e. that he was told that Park Towers was near completion, with only some snagging works remaining and completion was expected within three months. The specific unit offered was to be 2402.53 square feet, on the seventh floor of the building, with a pool full pool view and two parking bays. He says, in para.5, that based on those representations he entered into the SPA. The purchase price was AED 3,844,048.00. Mr. Dwela says in para.6 that by July 2011 he had paid that price in full in accordance with the terms of Schedule 1 of the SPA (which set out a timetable for the payment of the price by instalments).

13. The salesman for Damac for the period up to the signing of the SPA was a Mr. Sajjad Farahani (**"SF"**). He did not give evidence at the trial, having left Damac in June 2010 without leaving any contact details. In his oral evidence, Mr. Dwela said that he had insisted that he would not purchase anything unless it was already completed. SF had taken Mr. Dwela by car to show him Park Towers from the outside. It had seemed to be complete. Mr. Dwela asked to see inside but was told that that was impossible, because of work going on inside the building and health and safety concerns. In cross-examination he was shown a photograph of Park Towers (E/161), said to have been taken by the projects team in May 2010, which showed the building with cranes still in position around it and the cladding clearly incomplete. Mr. Dwela said that the photograph must have been taken at an earlier point in time because, when he had seen it, the building was all completed, even the top section. Although I found Mr. Dwela generally to be a credible witness, I do not accept this part of his evidence. The date of the photograph was spoken to by Mr.

Kukar, the Manager of Damac's Client Relations Department, who, in the absence of anyone with direct knowledge of what had happened, had undertaken the task of finding relevant documents within Damac's possession. Mr. Kukar was not cross-examined on this aspect of his evidence and I found him to be a credible and reliable witness so far as his evidence went. I accept his evidence that the photograph showed the building in May 2010. It is consistent with other documents stating that the cladding was not completed until much later (see e.g. Update Reports of August and November 2010, at E/343 and 353 respectively). On that basis I cannot accept Mr. Dwela's evidence that he was shown a building that was complete, with a maximum of 3 (or, sometimes, 3-6) months required for finishing and snagging. He must be mistaken in his recollection. If he had looked at the building from the outside he would have known that the building was still in the course of construction.

14. A separate but overlapping point is that, according to Mr. Dwela, he was told by SF that the unit would be completed in 2010. He was told the size of the unit and likely completion date and it was further confirmed to him that these details would all be set out in the SPA. The SPA was signed on 18 May 2010. Mr. Dwela said that he did not read it carefully before signing it. However, he did want to check what the SPA said about the size of the unit and the handover date. If he had checked the SPA on these points, as I understood him to say he did, he would have seen that the SPA confirmed what he was told about the size of the unit; but he would also have seen clauses 10 and 12, the material parts of which are quoted above, and would have appreciated the possible impact of those clauses on the size of the unit once completed. Further, he would have seen the Anticipated Completion Date of June 2011 - not some date in 2010 - and he would also have seen the terms of clause 5 giving a right to extend this by a year until June 2012. The SPA did not say anything about a pool view.

15. One point of detail should be mentioned here. On 27 May 2010, nine days after the SPA was signed, Damac received authorisation for a change of layout for Mr. Dwela's unit and, as I understand it, the whole seventh floor of the building. The change of layout involved a reduction of about 11% in the size of Mr Dwela's unit (precise details are given later in this judgment). Though no evidence was led about this, it is obvious that the application for a change of layout must have been made by Damac some considerable time ahead of the grant of authorisation. Damac must have known prior to the signing of the SPA, and probably prior to any statements made to Mr. Dwela about the size of the unit, that they had applied for authorisation for a change of layout and that, if authorisation was granted, and subject to further changes of layout or variations pursuant to clause 12 of the SPA, that would result in a unit size smaller than the size Mr. Dwela was being told.

16. Given the limited nature of the dispute, it is unnecessary to set out any more of the evidence in detail. The building was complete by the end of 2011. In January 2012 Mr. Dwela was asked to sign the handover documents. There was a certain amount of confusion around the information Mr. Dwela was given about the state of his account. Matters were clarified and he was again invited to sign the handover documents in March 2012 and again in April 2012. Mr. Dwela viewed the property for the first time in March 2012. Nothing was said expressly about any change in the size of the unit until April 2012. But Mr. Dwela was given inaccurate and misleading information about the unit size. The Notice of Completion on 5 January 2012 had attached to it a statement of account stating that the "Apartment Area" was 972 square feet. A revised Notice of Completion dated 23 February 2012 informed Mr. Dwela of "errors in the calculation of unit areas" in the January Notice and attached a statement of account showing the unit area as 2402.53 square feet. Another statement of account dated 11 April 2012 showed yet another unit size, this time 2136.63 square feet. Much later, on 10 August 2015 Luxury Facilities Management LLC issued a statement of account stating the area of the unit to be 1588.44 square feet. Some of this is explicable and turns on the construction of clause 10.10 of the SPA. But some were simply an error by Damac compounded by further errors.

17. Three specific misrepresentations are relied upon: (a) that the unit would have a full pool view; (b) the estimated completion date; and (c) the size of the unit. I deal with each of them below.

"Full pool view"

18. Mr. Dwela says that he was told that he was getting a full pool view. SF, who would have been the responsible person at Damac, was not traceable and therefore, as I have said, did not give evidence. But I consider it inherently unlikely that Mr. Dwela would have been given a categoric assurance to this effect. I can understand that he may have been told that his unit was on the same floor as the swimming pool - which was in fact the case, as he was aware - and Mr. Dwela may have understood this as meaning that he would have a pool view. It is noteworthy that in para.4 of his first witness statement Mr. Dwela does not indicate how the topic of a full pool view arose. He does not even say that he asked for a unit with a pool view or that he regarded this at the time as of any great importance. I do not find Mr. Dwela's evidence on this point to be compelling. I do not find it proved that this representation was made.

19. I can therefore deal with other aspects of this alleged misrepresentation fairly quickly. The promise, if it had been made, that the unit would have a full pool view is not a representation of fact, past or present. It might have been actionable as a collateral promise, but that would be a claim in contract and Mr. Dwela's claims in contract, including collateral contract, have been struck out because they were not brought in time. It might, I suppose, arguably have given rise to an implied representation that Damac, or those responsible within Damac, (a) believed on reasonable grounds that Mr. Dwela's unit would have a full pool view, and/or (b) did not know of any facts making it impossible to achieve this: see para.14 of the judgment of Justice Sir Richard Field in the Court of Appeal in this case, citing Brown v Raphael [1958] Ch 636 and *Spice Girls Ltd v Aprilia World Service BV* [2002] EWCA (Civ) 15 (I do not see any important distinction between the two formulations for present purposes, and in future references, for simplicity, I shall refer to these implied representations together as representations of belief on reasonable grounds or something similar). However, there is in my view very great difficulty in implying any such representation in circumstances where the SPA itself in clause 12 specifically allows Damac to make variations to the plans and in particular (clause 12.2) "to change, vary or modify the design, layout or location of the Unit" (emphasis added). I do not, however, need to decide this point in light of my decision on the facts.

20. I should mention that it was argued on behalf of Damac that the Brown v Raphael and Spice Girls line of authority was not available to a person in the position of Mr. Dwela under DIFC law, since Article 29(2) and (3) of the DIFC Law of Obligations excluded the implication of honest belief as a basis for misrepresentation. The argument, as I understood it, was that the implied statement of belief on reasonable grounds, such as was held to exist in *Brown v Raphael* to take that example as a reference point, was to be equated with a statement of opinion which under DIFC law (see para.7 above) can only be a representation if accompanied by a further incorrect representation. With respect I think this misses the point. The implied statements in Brown v Raphael and in Spice Girls are not implied statements of opinion - they are implied statements of fact and actionable as such if incorrect.

Estimated completion date

21. I have already explained that I reject that part of Mr. Dwela's evidence in which he said that he was told that the building was complete and there was just finishing or snagging work to be finished which would take no more than 3-6 months. Further, Mr. Dwela said in his evidence that he was quite happy to wait for completion on the Anticipated Completion Date of June 2011 set out in the SPA. That Anticipated Completion Date operates as a contractual term, though it is of course subject to the qualification in clause 5 of the SPA that the seller reserves the right to extend the Anticipated Completion Date by up to twelve months. It might still be possible to imply a representation on the part of Damac of honest belief on reasonable grounds along the lines mentioned in the preceding paragraphs, but, quite apart from the difficulty of squaring this with the provisions of clause 5, this leads nowhere since there was no evidence to suggest that that Anticipated Completion Date of June 2011 was not a perfectly reasonable estimate at the time the representation was made - indeed the weekly progress reports provide support for that date as being a reasonable estimate.

The size of the unit

22. The issue about the size of the unit is complicated by a dispute between the parties as to what is to be included within the measurement. This turns on the construction of clause 10.10. I have quoted that provision above. The critical part is the second sentence beginning with the word "However...". After stating in the first sentence that the "Total Area" of the unit stated in the Particulars (in this case 2402.53 square feet) is "the net floor area of the Unit" measured in a certain way, the clause goes on in the second sentence to say this:

> "However, if the Permitted Use of the Unit is `office' then the Total Area of the Office Unit includes, for the purpose of calculation of the Purchase Price only, that part of the Common Office Area which is attributable to the Unit as described in clause (1.1) of this Agreement."

In other words, where the unit is an office, the total area of that office will be the aggregate of the "net floor area" of the office itself (measured in that same way) and a proportionate share of the "Common Office Area" (the **"COA"**). The permitted use of the unit in this case was "office". Therefore the figure of 2402.53 square feet given for the Total Area of the unit represents the net floor area and a share of the Common Office Area.

23. Mr. Dwela appears not to have understood this. He argued that the words "for the purpose of calculation of the Purchase Price only" meant that the Common Office Area was to be disregarded for all other purposes, so that the figure of 2402.53 square feet set out in the SPA represented the net floor area of the unit itself. I do not accept that interpretation of the clause. It would give no content to those words. What the clause intends to convey, and it does so successfully in my view by the explanation in the last sentence, is that the buyer is paying for the Total Area, comprised of the net floor area and a proportion of the Common Office Area, but of course in terms of land registration the area of the unit to be registered is the net floor area.

24. I have started the discussion on this point by focusing on this difference between the parties because it helps to understand the broader argument about the alleged misrepresentation relating to the size of the unit. There is no doubt that Mr Dwela was told that the size of the unit was 2402.53 square feet, both before he signed the SPA and in the SPA itself. He was specifically told that the size would be confirmed in the SPA. And so it was, along with the explanation in clause 10.10 as to what that size meant in terms of an office unit. It was not clear from his evidence whether Mr. Dwela read clause 10.10 - I suspect not - but the explanation was clearly set out there and must qualify any statement about the intended size.

25. The figure of 2402.53 square feet was comprised of a net floor area of 1805.23 square feet and a further 597.29 being the proportion of the COA attributable to the unit. The revised floor plan, approved on 27 May 2010, involved a total figure of 2136.63 square feet for the unit, split between a net floor area of 1588.44 square feet and a proportion of the COA amounting to 548.19 square feet. The overall reduction is of the order of 11%.

26. Mr. Dwela's first witness statement explains his concern at being told that the unit size was in fact 1588.44 square feet as opposed to the 2402.53 square feet which he thought he was getting. A measurement made by Cavendish Maxwell gave a figure for the net floor area of the unit as built as 1571.85 square feet but in the context of this dispute the difference of under 17 square feet is of no great moment. For the purpose of this discussion I shall use the Cavendish Maxwell figure. It was this comparison of warranted Total Area of 2402.53 square feet as against the figure for net floor area of 1571.85 square feet that struck Mr. Dwela as unacceptable, but he was not comparing like with like. I do not read his witness statement as expressing a similar level of concern about the reduction of the Total Area from 2402.53 square feet to 2136.63 square feet, and I did not understand his oral evidence in that way either. He is entitled to compensation for that shortfall under clause 12.1 of the SPA.

27. The statement about the size of the unit was not a representation of existing fact. It was a statement as to the future, when the unit was completed and made available for hand over. Without deciding the point, it could arguably, despite the provisions of clause 12 giving Damac the power to make such variations as it chose to make, be treated as an implied statement of fact that Damac believed on reasonable grounds that that would be the size of unit when completed and that Damac knew of nothing which would prevent that being accomplished (see the discussion of this line of authority above). On that basis it might be arguable that Damac ought to have disclosed to Mr Dwela that they had applied for authorisation for a revised floor plan which would result in his unit being slightly reduced in size, and that without such disclosure the implied representations were untrue. But this line of argument does not ultimately assist Mr. Dwela, since I am not persuaded that this omission to disclose that information had any material effect on Mr. Dwela's willingness to enter into the SPA on the agreed terms. What concerned him ultimately was the fact that the net floor area was so dramatically smaller than he had mistakenly thought he was going to get. The change to the Total Area from 2402.53 square feet to 2136.63 square feet was not something which unduly concerned him.

28. The reduction in the Total Area in the completed unit entitled Mr. Dwela to a rebate in terms of clause 12.1. I understand there is some dispute about the calculation of that rebate, but I am not concerned with that dispute.

29. It follows from the above that Mr. Dwela's claim for misrepresentation fails on the facts. I do not therefore have to consider the effect of the Entire Agreement Clause, clause 17.6; and I do not think it either appropriate or helpful to add my views to the body of obiter remarks about such clauses.

30. I turn then to consider Damac's counterclaim. Mr. Dwela did not address me on these matters, taking the view, as I understood it, that if his claim failed then Damac's claim must succeed, in principle at least.

31. Damac seeks an order for specific performance of Mr. Dwela's obligation under clause 5.3 of the SPA to take possession of the unit, and of his obligation under clause 6.4 of the SPA to cooperate in and sign the required documentation. I see no basis to refuse this order and I shall grant it.

32. Further, Damac seeks an order for payment of the following amounts:

(a) service charges pursuant to clause 10.2 of the SPA from Completion Date in the sum of AED 302,803.34 (calculated as at the beginning of August 2021) - in principle this claim is justified, but Mr. Dwela was, I think, justified in refusing to complete for a few months in 2012 given the confusing and contradictory information he was being given - absent material to enable me to do a precise calculation, I propose to reduce the damages from the sum claimed and make an award under this head of AED 270,000;

(b) compound interest on the outstanding sums pursuant to clause 4.2 of the SPA - I shall refuse this head of claim, since in my view this clause relates to delay in payment of the purchase price and does not apply to other sums alleged to be due; alternatively

(c) simple interest to date in the sum of AED 108,169.92 - in principle this is justified but, consistently with the reduction of the sum claimed under (a), I shall reduce the amount awarded in respect of simple interest to date to the sum of AED 100,000.

I shall make an order for payment of AED 370,000.00, comprising the sum of damages set out at (a) above and simple interest as set out at (c) above.

33. As agreed between the parties, I shall allow 28 days for compliance with this order to avoid any difficulties caused by the forthcoming holiday period.

34. Mr. Dwela must pay Damac's costs of this action to be assessed by the Registrar on the standard basis if not agreed between the parties.