



A New Era in Residential Real Property Sale

Residential projects in Turkey can be defined as one of the most charming investment choices in the Turkish real estate market, not only for the investors/developers, but also for the consumers. Consistently increasing land prices led the developers to invent an auto-financing system whereby the consumers would purchase residential units by simply looking at mock-ups of the development. In this system, the consumer would pay a certain portion of the purchase price in advance and the remaining amount in installments. The proceeds received from the consumers helped the developers reduce their financing burden with the financial institutions. This system was beneficial both for the developers and the consumers, and most of the residence sales were completed with this system. However, the system was definitely not flawless and there occurred a lot of disputes between the consumers and the developers, especially in circumstances where one of the parties would be in default.

As a result, the new Consumer Protection Law numbered 6502¹ (the "CPL") introduced revolutionary and radical provisions regarding residence sales with advance payment bringing a great deal of protection to the consumers and quite a lot of burden and penalties on the developers' side. Moreover, the Ministry of Customs and Trade (the "Ministry") issued a draft regulation (the "Draft Regulation") to elaborate on the provisions of the CPL regarding residence sales with advance payment.

The purpose of this bulletin is to provide developers/investors and consumers with the key points and novelties on residential property sales with advance payment within the scope of the CPL and the Draft Regulation. Considering that the Draft Regulation has not entered into force as of the date of this bulletin and the Ministry continues its works on the Draft Regulation, certain information stated in this bulletin may be subject to change.

1. Execution of the Residential Real Property Sale with Advance Payment Agreement in Statutory Form

Under Turkish Law, an agreement concerning the sale of a real property must be executed ex-officio (in the form mandated by law) before a notary public. Otherwise, the agreement is deemed null and void at its entirety. However, when the former Consumer Protection Law was in force, residential real property developers did not respect this mandatory requirement and executed the residential real property sale with advance payment agreements (the "Agreement") (*ön ödemeli konut satış sözleşmesi*) in the ordinary written form.

Considering that the execution of the Agreement in the ordinary written form led to many disputes, the lawmaker decided to include a clear provision to the CPL. According to Article 41 of the CPL, the Agreement must be executed before a notary public in order to be binding on the contractual parties.

¹ The new Consumer Protection Law was enacted on 28 November 2013 and entered into force on 28 May 2014.

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If the Agreement is not executed in the statutory form, the seller will not be entitled to request any payment from the consumer under any name whatsoever or any document (bond, security etc.) which burdens the consumer with debt.

2. Obtaining the Construction Permit before the Execution of the Agreement

According to Article 40 of the CPL, the seller must obtain the construction permit before entering into the Agreement. If the seller executes the Agreement before obtaining the construction permit, the seller will be subject to an administrative penalty corresponding to TRY 100,000 under Article 77 of the CPL.

3. Delivery of the Preliminary Information Form

Under Article 40 of the CPL, the seller must deliver a preliminary information form (the “**Form**”), the mandatory content of which will be determined by a regulation to be issued by the Ministry to the consumer, at least one day before the execution of the Agreement.

Under Article 5 of the Draft Regulation, the seller is obliged to state all important details regarding the residential unit (e.g. delivery date, date of the construction permit etc.), consumers’ rights set forth under the CPL and to deliver the management plan of the building, the layout plan of the residence and the residential unit, the technical specifications and the land registry record of the residential unit.

4. Delivery Date of the Residential Unit

Under Article 44 of the CPL, the residential unit must either be delivered or its title be transferred to the consumer within 36 months following the execution date of the Agreement.

If the seller does not duly deliver the residential unit within 36 months following the execution date of the Agreement, the seller will be obliged to pay TRY 20,000 as an administrative penalty per residential unit not duly delivered to the consumer.

5. Consumer’s Right to Withdraw

Under Article 43 of the CPL, the consumer is entitled to withdraw from the Agreement without paying any penalty fee and without stating any grounds within 14 days following the execution date of the Agreement. The CPL expects the seller to prove that the consumer was properly informed about his/her right to withdraw from the Agreement.

If the residential unit is intended to be purchased through a loan to be borrowed from a financial institution, the loan agreement will be deemed to enter into force at the end of the withdrawal period. The financial institution providing the loan is not entitled to demand any expenses under the name of interest, commission etc. until the end of the withdrawal period.

Under Article 7 of the Draft Regulation, if the consumer exercises his/her right to withdraw from the Agreement, the purchase price paid by the consumer and all documents binding on the consumer must be returned to the consumer within 14 days following the date that the withdrawal notice is received by the seller. The consumer will return his/her gains pursuant to the terms of the Agreement to the seller within 10 days following the seller’s return.

6. Consumer's Right of Rescission

Under Article 45 of the CPL, the consumer is entitled to rescind the Agreement any time before delivery or the title deed transfer of the residential unit.

If the consumer rescinds the Agreement, the seller is entitled to request from the consumer the expenses arising from taxes, fees, charges and similar legal duties and 2% of the Agreement amount (i.e. the purchase price) as compensation for rescission.

If the consumer rescinds the Agreement, the amount of the purchase price paid by the consumer and all documents binding on the consumer must be returned to the consumer within 90 days at the latest following the date that the rescission notice is received by the seller.

7. Advertisements

Under Article 10 of the Draft Regulation, if the purchase price of the residential unit is included in the brochures, advertisements published in the newspapers or on the internet, or featured on the television, such advertisements must include the net floor area information of the residential unit.

8. The Seller's Obligation to Provide Guarantee

Under Article 42 of the CPL, depending on the number of residential units within the scope of the development (the CPL does not provide for a number but the Draft Regulation draws the line above 30 residential units in a development), the seller must provide a *building completion insurance* or another type of security before starting the sale of residential units. The lawmaker is trying to mitigate the consumers' risk, should the developer is financially distressed during the construction process.

Real estate development and construction is one of Turkey's leading sectors driving the economy. Without a doubt, residential developments play an essential role in the growth of the real estate market. It is certain that the CPL will change the game for a lot of players in the market and may even slow the pace of residential developments for some time. However, it will also help some other sectors to rise, such as insurance companies providing *building completion insurance* policies.

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