

Turkish Property Contracts: Pre-Sale Agreement

Introduction

A real property pre-sale agreement (also known as *promise to sell agreement*) is, by definition, a contract under which the parties (i.e. the seller and the buyer) undertake to conclude a sales contract and execute the title transfer, at a later date, under certain conditions specified in the agreement (e.g. price, deadlines etc.). If one party fails to comply with his promise, the other party may either claim for damages or ask the competent court to render a ruling having the force of a sales contract. Pre-sale agreements are widely used especially in the sales of off-plan or under-construction properties. This article briefly explains the essential aspects of the pre-sale agreement under Turkish law.

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Subject-matter

The main obligation of the buyer under the pre-sale agreement is to pay the sales price, and the seller in return assumes the obligation to sell and transfer the ownership of a particular real property. The agreed-upon price can be paid in advance or after the title transfer, in lump sum or in instalments, or the combination of both.

Form and Validity

Under Turkish Law, the validity of all contracts aiming the transfer of ownership of real property depends on their official execution. As a result, real property sales contracts that are not concluded officially before a land registry officer are null and void. That is to say, any agreement or understanding concerning the sales of a property has

no enforceability, unless they are officially concluded in presence of an officer at the land registry.

Unlike a sales contract, a pre-sale agreement can also be concluded before a notary public. Put another way, a pre-sales agreement which has not been concluded in presence of a notary public or land registry officer shall not be valid and enforceable.

The sales price must be clearly stated in the pre-sale agreement. Besides, an express provision regarding the payment method must be included in the agreement.

Entry into Land Register

A pre-sale agreement can be recorded at the land registry. Once recorded, the rights arising out of the agreement can be asserted against subsequent owners and rights holders.

Although the pre-sale agreement concluded at the notary have a binding effect between the parties, the seller may sell the same property to third parties, unless the agreement has been entered into the land register. If the property has been transferred to a third party in the absence of such registration, the buyer can only request from the seller the paid amount and the damages thereof. On the other hand, if the property is transferred to a third party despite the existence of a registration, the buyer can claim its right of purchase against the third party.

As a rule, the seller and buyer can request the registration of the agreement into the land register. A separate provision in the pre-sale agreement or a separate protocol is not a pre-requisite for this request. The registration of the pre-sale agreement at the land registry shall be effective for a period of 5 years.

Seller's Breach

If the seller fails or refuses to execute the sales contract despite the buyer having fulfilled his obligations as per the pre-sale agreement, the buyer is entitled to file a lawsuit for an enforced transfer of ownership.

The ruling in favour of the buyer is considered as the sales contract and the title transfer request addressed to the land registry. As a

result, the ownership of the property is transferred from the seller to the buyer *per se*.

Termination

The pre-sale agreement ends with either successful execution of the sales contract or termination of the agreement by the parties. As the contract needs to be concluded at a notary public, the termination of the contract must also be made at the notary.

If one of the parties fails to fulfil his obligations, the other party may send a notice for termination. Furthermore, non-breaching party may demand his losses arising from breach of the agreement.

Turkish Citizenship

Foreign individuals and their family members can acquire Turkish citizenship by investing as low as USD 250,000 in real estate. The citizenship-by-investment program welcomes real estate purchases on the basis of pre-sale agreements, permitting participants to apply for citizenship before they receive the ownership of property.

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Following conditions must be met to gain eligibility to the program;

- At least USD 250,000 (or its equivalent in a different currency) has been paid prior to signing the pre-sale agreement,
- A construction servitude or condominium regime has been established for the property
- The pre-sale agreement has been recorded at the land registry, together with the undertaking not to assign or de-register the agreement for 3 years.

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