

Gökçe

# The Resolution

March 2018

Issue

04

## Construction Contract in Return for Land Share



### Highlights of this issue

Significant Points to Consider in  
Construction Contracts in Return for Land Share

Default of the  
Contractor

For further information please contact us at [contact@gokce.av.tr](mailto:contact@gokce.av.tr)

All Rights Reserved

## **CONSTRUCTION CONTRACT IN RETURN FOR LAND SHARE**

Construction contract in return for land share might be defined as an undertake of the landowner to enter into a contract subject to the property transfer of the certain shares of the land to the contractor in return for the delivery of the independent parts of the building to be built on the land by the contractor. As it is also understood from the definition, property transfer of a certain share of the land to the contractor by the landowner and the delivery of the designated independent parts of the building to be built by the contractor to the land owner are owed separately by the contractor and the landowner.

## **SIGNIFICANT POINTS TO CONSIDER IN CONSTRUCTION CONTRACTS IN RETURN FOR LAND SHARE**

In addition to the debt to deliver the construction by completing it within the agreed time and scope; construction permits, certificate of occupancy, construction servitude and tax liabilities might be assumed by the contractor. Otherwise, the performance of such acts shall be legally bear by the landowners.

Although the construction license is legally obtained by the landowner, it is possible to agree otherwise with a contract. For starting the construction, construction license is required. According to Article 29 of the Turkish Zoning Law, if there is no provision in the contract, construction should be started within two (2) years after receiving the construction license. In order to receive a certificate of occupancy, the construction must be completed in a proper and convenient manner. Even if the certificate of occupancy should be obtained by the landowner according to Turkish Zoning Law Article 30, it is possible to agree otherwise with the contract. The establishment of the condominium ownership and construction servitude are regulated between Article 1 and 14 of Turkish Condominium Law and the liability shall be undertaken by the landowner. Likewise, this obligation might be transferred to the contractor by the contract. Buildings with construction servitude are subject to real estate tax and the landowners shall be liable for the taxes. However, this obligation might be also agreed otherwise with the contract.



In practice, when the construction servitude is not established, the transfer of the whole land to the contractor might be carried out. In case the construction servitude is established, it is possible to transfer only certain land shares to the contractor. In this situation, the contractor gives an undertaking to the owners of the land shares to transfer the ownership of such certain shares to be allocated for the independent parts in the future. In case the construction



servitude is established, the land share cannot be transferred separately from the construction servitude. For this reason, it will be in favor of the landowners to set out a penalty clause for the contractor in case of any breach of the contract.

## DEFAULT OF THE CONTRACTOR

The contractor shall go into default if the construction is not completed within the specified time and scope. However, if there is no agreement term has been set out, the contractor will go into default by the notice of the landowner. The landowners should grant a proper time the contractor to perform his/her obligation, if they want to apply their termination rights arising from the Law. There is no formal requirement to grant a proper time; but it is useful to perform it through the notary to prove the fact. When the proper time is granted, it is not obligatory to notify the consequences of non-performance of the obligations to the contractor.

The certificate of occupancy and an appropriate construction are also required for the contractor to be considered to have carried out his/her liability, in the eye of the Court of Appeals.

If the contractor defaults, the landowners have three (3) options to apply:

### 1. Demand for the Completion of the Construction and the Compensation for the Default

In this option, the possible increase in the assets of each landowner and the rental payments to be received by the landowners might be subject to the compensation, if the planned construction would be completed at the time and in the way undertaken.

### 2. Demand for the Damages Arising from the Obligations that is not Satisfied by Withdrawing the Performance of the Completion of the Construction,

Landowners may notify that they withdraw on demanding the performance of the work (construction) and demand the damages due to non-performance of the obligations such as the completion costs of the construction and loss of rental income as compensation. In this case, compensation for the damages arising from the default may be also requested for the period between the withdrawing date and the default date.

### 3. Demand for the Compensation of Negative Damages by Reneging on the Contract

Any costs related to the establishment of the contractual relationship (such as fees and stamp tax payments, road expenses, notary expenses), costs incurred due to the performance of obligations performed under the contractual relationship that is invalidated (such as costs arising from the transfer transaction in the Land Registry Office) and litigation expenses are included. According to the Court of Appeals, in case ninety percent of the construction is completed, only right of termination of the contract might be applied.





# Answers. Not theories.

Gokce Attorney Partnership

## Editors:



**Doç. Dr. Ali Paslı**  
ali.pasli@gokce.av.tr



**Aslihan Kayhan**  
aslihan.kayhan@gokce.av.tr



**Ece Özkan**  
ece.ozkan@gokce.av.tr



**Mehmet Topluyıldız**  
mehmet.topluyildiz@gokce.av.tr

## About our firm

Gokce Attorney Partnership is an Istanbul-based law firm offering legal services across a broad range of practice areas including mergers and acquisitions, joint ventures, private equity and venture capital transactions, banking and finance, capital markets, insurance, technology, media, telecoms and internet, e-commerce, data protection, intellectual property, regulatory, debt recovery, real property, and commercial litigation. Please visit our web site at [www.gokce.av.tr](http://www.gokce.av.tr) for further information on our legal staff and expertise.

Please contact us at [contact@gokce.av.tr](mailto:contact@gokce.av.tr)  
0 212 352 88 33

*The Resolution olara is prepared and published for general informative purposes only and does not constitute legal advice or create an attorney-client relationship. Should you wish to receive further information, please contact Gokce Attorney Partnership. No content provided in The Resolution can be reproduced or re-published without proper attribution or the express written permission of Gokce Attorney Partnership. While all efforts have been made to ensure the accuracy of the content, Gokce Attorney Partnership does not guarantee such accuracy and cannot be held liable for any errors in or reliance upon this information. The Resolution was created for clients of Gokce Attorney Partnership and the possibility of circulation beyond the firm's clientele should not be construed as advertisement.*

For further information please contact us at [contact@gokce.av.tr](mailto:contact@gokce.av.tr)