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ABBREVIATIONS

a	article
ar	and the rest
aso	and so on
CCP	Code Of Civil Procedure Numbered 6100
CD	Civil Department
CO	Code of Obligations numbered 818
CPL	Consumer Protection Law Numbered 6502
D	Dated
Dec	Decision
DJC	Decision of Joint Chambers
EBC	Enforcement and Bankruptcy Code Numbered 2004
etc.	et cetera
FLJUI	Faculty of Law Journal, University of İstanbul
fn	Footnote
GACC	General Assembly of Civil Chambers
LPO	Law of Property Ownership Numbered 634
LRL	Land Registry Law Numbered 2644
N	Number
NPL	Notary Public Law Numbered 1512
OJ	Official Journal
p	page
Par	Paragraph
Princ.No	Principal Number of Decision

RLR	Regulations of Land Registry Numbered 28718
s.a.	See also
SC	Supreme Court
TCC	Turkish Civil Code Numbered 4721
TCO	Turkish Code of Obligations Numbered 6098
TCC	Turkish Code of Commerce Numbered 6102
UTBA	Union of Turkish Bar Associations
V	Volume
VAT	Value Added Tax

INTRODUCTION

Primarily, definition of Construction Contract In Return For Flat, which constitutes the basis of the study, should be made in this study named Construction Contracts In Return For Flat. Construction Contract In Return For Flat; is the building model that comes into view when a landowner, who cannot build a construction in his land with his own means or who wants to have construction done with the help of contractors that do this business professionally, has not the capital required for having this business made or wants to have the construction done without spending money. Through this model, the contractor makes the construction and delivers the certain amount of detached sections of the construction made, to the landowner in return for land. The contractor owns himself the remaining detached sections of the construction that he built.

In order to be able to implement Construction Contract In Return For Flat, a contract is drawn up by way of mutual agreement between landowner and contractor and signed. Land costs, which impedes the most to the feasibility of massive projects made in construction sector, are surpassed easily thanks to Construction Contract In Return For Flat and this issue might be came up with a solution. By this means, the number of applicable projects in the sector increase and economic buoyancy increase. Both landowner and contractor generates profit by virtue of Construction Contract In Return For Flat. Moreover in these projects, contractor construction firms standing as representatives of landowners and consequently construction sector and all of its sub-sectors gains favor indirectly from that system.

Different legal and technic disagreements and disputes, more or less, emerges at all the contracts made between landowner and contractor during a building construction. The most important reason for these disputes is the lack of legal and technical knowledge of the

landowner about the various issues that he should consider during the creation of the contract. It is necessary for landowner to take an important step so as to form a basis in terms of overcoming these deficiencies and making it easier to resolve disagreements. Employer must be rendered with technical and legal enlightenment service in terms of his own both personal interests and rightfulness in legal platform. This enlightenment service is provided by professional contractor firms of construction. Landowner, who has technical knowledge required for construction applications or the contractor firm, who is a party in the character of his representative, must be competent in the technical and legal details of contract, which will be made with the contractor; it must be ensured a very clear and consistent contract in terms of finalizing any potential problem in accordance with the interests of landowner. Through this means, it will be possible to prevent birth of unintended consequences. Even if the landowner has adequate technical and legal knowledge or gets professional help in this subject, it is always possible that disagreements would arise between him and the contractor, with whom he signed Construction Contract In Return For Flat. Notably the circumstances that one encounter, when the contractor firm is not well meant, sometimes get complicated. When such undesirable situations are encountered, of course land owner and contractor firms, standing as its representative, appeal to legal authorities by means of using their optional rights arising from article or articles that are added in order to guarantee themselves in Construction Contracts In Return For Flat, which are made to protect landowner's interests.

One of the biggest problems that is experienced between the landowners and contractors, who are parties to the Construction Contracts In Return For The Flat, is the circumstances that contractor has not started the construction at all within the period that he has to finish the construction in accordance with the contract or he could not finish the construction, which he started, within the specified time and not be capable of delivering detached sections on time. In the circumstances in which exceeding time limit is in question, land owner has the chance of using his optional rights that he put under

protection by dint of the articles that he has made them added to the contract. These optional rights can be summarized as specific performance, compensation for positive damage by renouncing specific performance, damages for delay in performance, penal clause joined with performance, rescission of agreement, negative claim for damage and cancellation of contract and claim for damage.

On account of increase in population in our country and all over the world, migration from rural to urban areas as well as the development of technology increased the need for housing and workplace. It has been tried to meet this social and economic need by means of both in the form of many floors one on top of another on the terrain of landowner mostly in the city centers and by means of constructions in the form of multiple detached houses on a terrain. As a result, the search for solutions to meet these needs found out construction contracts in return for flat (in return for land share). Grand General Assembly of Supreme Court mentioned the birth of construction contract in return for flat with clauses such as "Our country's construction sector recorded a rapid development after inurement of Flat Ownership Law in 1965, a widespread type of contract named 'construction contract in return for flat', which is not seen in the past, has been born." in his Decision Of Joint Chambers dated 30.09.1988 and numbered 2/2

Construction contract in return for flat is a contract type, which is used widely in practice. This type of contract is not regulated specifically in Turkish Code of Obligations numbered 6098 and in other laws, came into existence in practice and developed and its utilization increased day by day and therefore, it became an area, in which anyone encounter with disputes more commonly. These disputes become greatly important, as there is no direct legal regulation on the relevant contract. Therefore, this gap in the construction contract in return for flat is tried to be filled with doctrine's explanations on this subject and judicial decisions.

Parties of construction contract in return for flat are landowner and contractor. As construction contract in return for flat give birth

to a long-term contractual relationship, limited or complete change may happen in its parties during this process. In practice, contractor gets the financment of construction notably by transferring right to claim on detached section to a third party and the landowner gets revenue. In addition, in the case of delinquency of contractor, it is preferred to change the contractor party. Similarly, due to various reasons, transferring property of land comes into question and in this case, the problem of whether new owner will be the party of contract or not emerges. Finally, in the cases of death or bankruptcy of one of the parties, inheritors or bankruptcy office might participate in the contract. Turkish Code of Obligations has regulated party changes as follows; transfer of claim, assumption of in debt- edness, accession of debt, transfer of contract, accession of contract. In the events of party change, the determination of rights and responsibilities of third party that participated in the contract and of the remaining party or parties in the contract, and the determination of which party changes will resolve the problems in practice are important. For that reason, our subject of study is specified as party changes in construction contract in return for flat.

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