



Procedure Of Land Revocation Of Construction In Progress For State And Public Needs

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ABSTRACT

The article discusses the procedure of land revocation where the construction is in progress for state and public needs. The issue of compensation to the owner in case of confiscation of land for the needs of the state and society was also raised. In addition, the author analyzed the legislation in this area.

KEYWORDS

Private property, land revocation, state and public needs, construction in progress, compensation, legislation.

INTRODUCTION

According to Article 53 of the Constitution of the Republic of Uzbekistan, “Private property, along with the other types of property, is inviolable and protected by the state. An owner may be deprived of his property only in the cases and in accordance with the

procedure prescribed by law. ”[1] This rule, enshrined in our main law, is aimed at developing sustainable legal relations in the field of property. Because private property can reveal its essence only if it is inviolable. Regulation of relations related to the abolition

of property rights in the absence of direct revocation of property by the owner is governed by the Civil, Housing, Land, Urban Development Codes and laws and regulations of the Republic of Uzbekistan.

Based on the third section of the Action Strategy for the Five Priorities of the Development of the Republic of Uzbekistan for 2017-2021, the establishment of procedure for recovering the loss of entrepreneurs caused on the basis of acquisition of the land construction in progress are located for state and public needs is determined in order to improve the mechanism for the protection of private property and the effective use of private property [2]. In addition, in the conception of "the improvement of civil legislation of the Republic of Uzbekistan" [3] revision of the procedure for determining the forms of property, the introduction of mechanisms to protect the right to private property on the land, as well as the protection of the rightful owner of property are set.

The adoption of the normative legal acts establishing the procedure for payment of compensation to landowners for the acquisition of land for the needs of the state and society can be considered as a guarantee of property rights.

It should be noted that the compensation paid during the revocation applies not only to residential or non-residential premises, but also to unfinished buildings or structures. Resolution of the Cabinet of Ministers of the Republic of Uzbekistan dated December 29, 2018 "On measures to improve the procedure for state registration of rights on real estate" Paragraph 5 of the Regulation [4] "On the procedure for state registration of rights to immovable property", attached as annex 1 to the decision No. 1060, describes the unfinished

construction as follows: buildings and structures that have been started but not completed on the due date, or whose construction (reconstruction) has been completed but not accepted for use on the basis of the act of acceptance for use ". According to the current Tax Code, the construction of unfinished objects is not completed within twenty-four months from the date of re permission from the competent authority, if the normative period of construction is not specified, including unfinished construction objects. "

The status of unfinished real estate remains unclear in the current legislation. Some legislation provides for the circulation of unfinished real estate. In particular, according to Article 63 of the Law of the Republic of Uzbekistan "On Mortgage", when issuing a loan or a specific purpose loan for the construction of a house, the mortgage agreement may provide for the obligation to provide unfinished construction (property and property rights of the mortgagor). However, the legal regime of an unfinished construction project remains unclear today and has led to different approaches. Despite the fact that the Civil Code of the Republic of Uzbekistan defines the legal concept of real property, as well as the criteria for belonging to the category of real estate, civil law does not provide specific rules on whether unfinished construction projects are real property or not. In this regard, it should be legally substantiated that unfinished construction projects should be objects of real estate, as well as objects of interest to business entities, and the legal regime of unfinished construction projects should be clearly defined in the legislation. However, in practice, the civil legal treatment of unfinished real estate is completed in the same way as completed real estate.

Although the legal status of unfinished real estate objects is determined by law, a number of theoretical scholars have elaborated on this topic in their research. For instance, according to A.V. Baykovskaya and N.N. Domojrova, an unfinished facility is one that has not been commissioned, constructed or reconstructed; is an object that has been authorized, but not completed within the prescribed period, or does not comply with the norms established by law [5].

Medianik Yulia Vladislavovna, in her research, notes that unfinished real estate objects are characterized by the following features:

- Technical: the object is technically incomplete, that is to say it does not meet the requirements of readiness in accordance with the project documentation;
- Economic: the unfinished construction object is not used for its intended purpose or the intended income is not received from it, as well as not all the funds provided in the project are spent for the construction of this construction object;
- Legal: the object is not officially commissioned - there is no act of commissioning, as a rule, the technical passport (technical plan) is not issued, the object is not included in the cadastral list and there is no certificate of registration of property [6].

Taking into account that the procedure for payment of compensation for unfinished facilities is the same as for completed buildings or structures depending on the Cabinet of Ministers of the Republic of Uzbekistan issued a decree on November 16, 2019. It would be expedient to refer to the Regulation "On the procedure for withdrawal of land plots and compensation to owners of real estate located on the revoked land plot" [7], given as Annex 1

to the Resolution No. 911 "On Additional Measures". On the basis of this Regulation, a radical change has been made in the system of land management for the needs of the state and society in the Republic. Thus, the agreement on compensation in connection with the revocation of land between the initiator of the land revocation and the owner of the real estate located on the revocation of land is subject to mandatory notarization. This provision further strengthens the guarantee of property rights established by our Constitution.

According to the current procedure, the following will be compensated:

- a) The market value of real estate located on the revoked land plot;
- b) The market value of the right to the revoked land plot;
- c) Expenses related to relocation, including temporary acquisition of another real estate object;
- d) Lost profits of individuals and legal entities;
- e) Other expenses and losses stipulated by the legislation or the Agreement.

The cost of arbitrarily built housing, industrial and other buildings and structures must also be covered.

This Regulation also defines the types of compensation to be paid to the owner of the land plot taken for the needs of the state and society, which are as followings:

- a) cash;
- b) transfer of another real estate object as property;
- c) a plot of land;
- f) other types of compensation provided in the agreement.

We can determine what is included in the other types of compensation described in the last paragraph "G" of this section by referring to the general rules of civil law. These can be the valuation of the building materials resulting from the demolition of the house to the owner at market value, or the payment of the owner at its market value in the case of confiscation of construction materials, compensation for trees, and so on.

Valuation of the land plot and the real estate located in it play a central role in the withdrawal of the land plot. Appraisal of immovable property to be demolished in accordance with paragraph 50 of the Regulation adopted by the Cabinet of Ministers shall be carried out after the decision to withdraw the land plot and before the conclusion of the Agreement in the manner prescribed by the Cabinet of Ministers of the Republic of Uzbekistan marked. In addition, in case of dissatisfaction of the parties with the results of the assessment, an examination of the reliability of the assessment report is conducted in accordance with the legislation. Expenses related to the examination shall be reimbursed by the party dissatisfied with the results of the assessment and the appraisal organization shall be liable for the damage caused to the customer as a result of non-performance or improper performance, as well as damage to the customer, including lost profits. referred to this paragraph.

Protection of property interests is one of the main tendencies in civil law at all times. Legislation will also be improved to promote this tendency. For example, the publication of the draft Resolution of the Cabinet of Ministers of the Republic of Uzbekistan "On approval of the Regulation on the procedure for valuation of real estate located on the seized land, including the rights to the seized land" in

connection with the seizure of land is also a shining example of our aforementioned views.

The followings are established in that draft:

- Valuation of perishable real estate, including rights to land, is based on the market value immediately before the decision to withdraw the land, or when the notice of future land acquisition does not affect its value;
- Assessment of demolished real estate objects is carried out on the basis of cadastral collection of real estate objects, cadastral passport and cadastral documents;
- Assessment of the right to the land plot is carried out on the basis of documents confirming the state registration of the rights to the land plot;
- The customer of the assessment of the property to be demolished, as well as the right to the land plot, can only be the owner or his authorized representative. In this case, the fee for the assessment must be covered by the municipality or the investor who initiated the seizure of the land;
- Re-assessment of the object of real estate to be demolished, as well as the right to the land plot within six months from the date of the report on the assessment. Violation of such a procedure is considered a one-time gross violation of license requirements and conditions of appraisal activities;
- If there is an agreement between the investor and the owner on the amount, type and timing of compensation, the assessment of real estate is not required;
- Damaged real estate objects are assessed only by court decision.
- The project also envisages the assessment of real estate objects built arbitrarily on the land plot allocated (separated) in the

prescribed manner, including unfinished buildings and structures on the land plot for the purpose of compensation.

CONCLUSION

As a final observation, it should be mentioned, compensation for real estate construction in progress is made on a general basis, as for other real estate. But there are some differences between them. For example, citizens can register only in completed housing, which gives them the right to receive housing separately, based on the social norm of housing. In addition, the owner of the completed real estate may also claim compensation in the interests of the users of that property.

In conclusion, it should be noted that real estate of the construction in the progress is also an object of civil law on a general basis. Proceeding from this general rule, we can conclude that the aforementioned ideas are theoretically and practically correct.

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