



Research Article

LEGAL ASPECTS OF EQUITY PARTICIPATION IN CONSTRUCTION IN UZBEKISTAN AND ABROAD

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ABSTRACT

This article covers the legal constructional issues of equity participation and its importance. Also, the rights and obligations of the investor and the builder, the performance of services and works, including the contract for the performance of construction work, the objects of the contract, the deadline for the completion of the object, the subject of the contract, the rights and obligations of the investor and the builder, the responsibility of the lender and the borrower. The builder is liable for accidental loss or accidental damage, the creditor is liable for causing harm to third parties, the transfer of the rights and obligations of the creditor to his successor or another person, termination, termination or early termination of the contract for the performance of construction work and conditions such as termination are indicated.

KEYWORDS

Equity participation in construction, investor, builder, escrow, lender, borrower, consensual, real, objects, third party rights, intent or negligence, contract term.

INTRODUCTION

The problem of providing citizens with housing is a priority for the state in the vast majority of countries of

the world, especially for Uzbekistan, which has a dynamically growing population. In order to ensure its



solution at the state level, certain means and measures are applied in each country, such as the development of state support programs, as well as legislation that ensures the observance of the rights of participants in the housing construction market. Real estate mortgage lending has gained popularity in recent decades both in Uzbekistan and in a number of foreign countries, especially post-Soviet states, since it allows you to purchase housing at a cost much lower than ready-made housing.

In 2021, the President of Uzbekistan signed a Decree on additional measures to provide the population with housing through mortgage loans based on market principles. In accordance with the provisions of the document, the Ministry of Finance of the Republic placed funds on accounts in commercial banks for a period of 15 years. Using them, banks provide residents of the country with mortgage loans on more favorable terms in order to apply for a subsidy. For the rest of the population who are not eligible for a subsidy, mortgage rates are issued at a rate of 17-18% per annum (a program created with the participation of the Ministry of Finance), with an average loan term of 5 to 15 years. The commercial lending rate in 2022 ranged from 23% to 28%. The down payment for the purchase of an apartment on a mortgage starts from 25% of the value of the property. The mortgage rate on construction in progress has increased from 17% to 20% (since March 2022). Potentially high rates of demand for real estate in Uzbekistan are due to the constantly growing population, which exceeded 34 million people. This figure is only slightly inferior to the total number of inhabitants of all other countries of the Central Asian region combined. About 72% of the inhabitants of Uzbekistan have not reached the age of 40, and the average age of the population is kept at around 28 years. The real estate market is characterized by high demand for furnished housing. In

the capital of Uzbekistan and the centers of the regions, the desire of public demand for changes in the business sphere and a civilized transformation of lifestyle is increasing, an increase in the rate of urbanization of the population. The development of the construction sector is facilitated by free land provided for residential development. The high level of attractiveness of Uzbekistan in terms of investment is due to the cheap costs of the services of specialists in the field of real estate construction. Given the current trends, in the next 10 years, the real estate market in Uzbekistan is expected to be dominated by increased demand for housing with a shortage of offers. In the context of stable income growth of the local population, the promotion of new mortgage lending programs and a decrease in the level of interest rates on loans, in the next 5 years, residential real estate prices are projected to increase by up to 10% per year. Assessing the potential of the real estate market in the period under review, experts predict an expansion of its capacity to 3 million square meters. meters of living space annually. It is the price of housing in houses under construction that makes shared construction attractive for people who want to improve their living conditions, but there are also negative factors in this area, in particular, abuse by developers.

However, in the field of shared construction there are multiple violations of the law and the issue of regulating the sphere of shared construction, in particular, in the context of civil, administrative and criminal legislation, requires attention from the legislator and science. In addition, it is also relevant to study foreign experience in regulating legal relations in the field of mortgage construction, since this allows developing and improving legislation in Uzbekistan, based on the positive experience of other countries, as well as taking into account their mistakes.



For the first time, shared construction as a form of investment activity appeared in Argentina in the second half of the 1980s. The spread of shared construction in Argentina was facilitated by the deep economic crisis that took place in the country at that time. The Argentinean currency, the peso, has seriously depreciated, the percentage of people living below the poverty line has increased significantly in a short period of time. All this led to the fact that only a small part of the population could afford relatively comfortable living conditions and was able to purchase housing as a property. The state, having taken care of this issue, set out to support the impoverished segments of the population and contribute to the provision of housing for people who need it. To achieve this goal, in 1985, at the initiative of the current president of Argentina, the Building for Justice program (Construcción de la equidad - Spanish) was developed, according to which, at the initiative of the state, a company was formed, created exclusively for the purposes of implementing this program, on which was entrusted with the authority to build residential buildings with the attraction of funds from citizens - participants in shared construction. Thus, the sphere of shared construction was under the full control of the state, which excluded the commission of any illegal acts against equity holders. Created solely for the purposes of implementing this program, which was entrusted with the authority to build residential buildings with the involvement of funds from citizens - participants in shared construction. The experience of Argentina inspired the construction market participants in other countries of Latin America to create similar schemes for shared construction, but this resulted in a large number of deceived equity holders and litigation in criminal cases due to the lack of state control.

In the 1990s shared construction came to the territory of the countries of the former USSR, where it received

its further development. For example, the first step in improving the Russian criminal legislation was the introduction of amendments to Part 4 of Article 159 of the Criminal Code of the Russian Federation, namely, the addition of this part with such a qualifying circumstance as the deprivation of a citizen's right to housing. However, the disadvantage of this change in relation to the sphere of shared construction is that as a result of abuse by the developer, there may be other consequences for the injured party, thus, a large number of different offenses committed by developers against equity holders remained uncovered. Finally, in 2016, the Criminal Code of the Russian Federation was supplemented with a new article in its content, Article 200.3 "Attraction of funds from citizens in violation of the requirements of the legislation of the Russian Federation on participation in the shared construction of apartment buildings and (or) other real estate objects." Thanks to this important change, it has become much easier to qualify the actions of developers that infringe on the rights and interests of participants in shared construction, as a result of which the number of cases of officials of construction companies evading criminal liability has decreased.

Also in Kazakhstan, in order to regulate relations arising from the conclusion of contracts for participation in shared construction, on April 7, 2016, the Law of the Republic of Kazakhstan "On equity participation" was adopted in housing construction". Analysis of this law allows us to conclude that a significant number of its provisions are similar to the provisions of the Russian. The Law on Shared Construction, which is not surprising, given the close integration of our country with the Republic of Kazakhstan. At the same time, it should be noted that since in Kazakhstan the legislation regulating relations in the field of shared construction was developed only



a few years ago, it can be noted that it requires serious improvement. With regard to criminal liability, it follows from the provisions of the Criminal Code of the Republic of Kazakhstan that that officials of developers who commit illegal actions that violate the provisions of the legislation on shared construction and the rights of equity holders can be held criminally liable mainly under Art. 190 "Fraud", there are no special criminal law provisions regarding crimes in the field of shared construction.

The scheme according to which shared construction is carried out in the countries of Western Europe, is somewhat different from that which originally arose in the countries Latin America, as well as from those used in the countries of the former USSR.

So, in Germany, an apartment can be purchased on the terms of payment in installments. For example, at first the buyer pays 25% of the cost, after which the apartment is assigned to him, another 30% is paid after the erection of the supporting and enclosing structures of the building, 20% - after finishing work and installation of heating systems, plumbing, electrical equipment, 20% - upon transfer of rights property, 5% - after the completion of construction. At the same time, if the developer goes bankrupt at one stage or another, the work will be completed by another company. Payment for the construction is carried out from the escrow account in the bank where the buyer's funds are deposited. According to the laws of Germany, Spain, France, Great Britain and Russia, equity holders do not give money to the developer, but deposit it on a special escrow account in a bank.

In these countries, this rule was introduced in 2008, when, due to the crisis, a large number of construction companies unable to fulfill their obligations and declared themselves bankrupt. Due with this, the states of these countries reformed the system of

shared construction, assigning part of the control functions on banks that checked the developer to be able to fulfill their obligations to investors. Thus, the states of these countries were measures have been taken to prevent building abuses companies in terms of misappropriation of cash equity holders' funds.

In the United States of America for regulation of legal relations in the market shared construction provides for a mechanism for prosecutorial supervision over the activities of construction companies. To the powers of the officials who are entrusted obligation to exercise supervision, which includes control over the attraction and expenditure of shareholders' money. Cash funds of equity holders that they transfer to pay for the equity participation agreement in favor of the construction company, to a special prosecutor's account, through which further distribution of these funds for construction purposes. Thus, through the implementation of prosecutorial supervision, the spending of funds of equity holders for purposes other than construction is prevented certain residential buildings.

At the same time, in some countries there are more effective mechanisms for protecting the rights and interests of equity holders, which ensure the prevention of the commission of criminal offenses in this sphere, in some, on the contrary, protection measures the rights of participants in shared construction are weak. Meanwhile, the analysis of studies shows that the nature of the crimes committed in the field of shared construction is largely similar in different countries of the former USSR, the most common of which are actions qualified as fraud, such as forgery of documents, non-compliance with registration requirements contracts of equity participation in construction, as well as misappropriation and embezzlement of funds raised



for the purpose of shared construction with further concealment of officials.

In the countries of Western Europe compared with the countries of the former USSR the problem of criminal offenses infringing on the interests of equity holders is practically absent due to well-designed fundraising mechanism participants in shared construction, as well as due to effective and strict government control measures. Accordingly, as a result, the state does not need to reform too often norms establishing criminal liability for crimes committed in the field of shared construction, because civil law system as well as the existing mechanisms for bringing to administrative responsibility are effective enough to minimize disturbances in this area.

The theoretical definition of the legal nature of the contract under consideration is necessary to conduct a comprehensive analysis, widely using the comparative method of research. The Civil Code of Uzbekistan did not pay attention to the share participation of citizens in the construction of residential premises, although this trend is found not only in the legislation of Uzbekistan. It is very difficult to specifically regulate all the grounds for acquiring property rights, and they are not regulated without problems in any legislative system. However, many grounds for acquiring property rights must be specifically regulated so that people can, relying on the law, consider themselves owners, since they acquired property on the basis directly provided for by law. In this regard, it is advisable to identify all the classification features to determine the legal nature of the contract in question. But first, let's define the most significant, norm-forming feature - this is the direction of the obligation. Under an agreement on the equity participation of citizens in the construction of residential premises for personal needs, one party (the developer) undertakes

to build a certain real estate object or organize its construction within the time period established by the agreement, put it into operation and transfer the apartment to the other party (shareholder), and the shareholder undertakes to implement financing the construction of the facility and take your share in it. Based on the above definition, it becomes clear that this agreement is an agreement on the transfer of property into the ownership of citizens for use in non-entrepreneurial purposes. The next feature that I would like to emphasize is the non-entrepreneurial nature of the contract in question. The shareholder builds residential premises not for profit, but exclusively for his own residence, that is, for personal consumer purposes. It is not a partnership commercial goal that connects him with the developer, but only the acquisition of the constructed result, their relationship does not go beyond this, it should be noted that this is the key point of all their relationships.

Thus, we can conclude that in different countries, shared construction originated and develops in different ways, depending on the characteristics each specific country. At the same time, countries neighboring each other often have similar mechanisms for regulating the sphere of shared construction, and the offenses that take place in such countries, as a rule, also have similarities.

For Uzbekistan study experience of foreign countries (especially the FIDIC) is undoubtedly necessary to improve mechanisms available in our country for regulating shared construction, protecting the interests of both parties to the contract, and for reducing the level of offenses committed in this area.

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