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ESSENCE OF PROPERTY RIGHTS AND INTERESTS IN RELATION TO UNFINISHED CONSTRUCTION OBJECTS

Donayev Abduqodir Haydarovich

Independent researcher of the Supreme School of Judges with the Supreme Judicial Council of the Republic of Uzbekistan, Uzbekistan

Abstract

Today what rights exist in relation to unfinished construction objects is a subject of controversy. While the property rights occupy a special place among the objects of civil law, they do not indicate the specific property right in relation to construction objects. As the interests of both the builder and the buyer must be ensured in this regard, we propose it is necessary to create a theoretical basis for the protection of property rights in relation to the unfinished construction objects. In addition, it is advisable to avoid the presence of only one-sided interests in the contract, to ensure that the conditions serve the interests of both parties, to ensure the timely and proper fulfillment of all obligations.

KEYWORDS: Unfinished construction objects, property rights, builder, buyer, contract, construction, obligations.

INTRODUCTION

It is natural that the question of what rights exist in relation to unfinished construction objects (UCO) is a subject of some debate. This is because conventional legal regimes rely directly on existing material rights or the norms of right to property specified for material rights. At this point, there are different approaches to the application of right to property or property rights in relation to the UCO.

First of all, it is important to determine what has been the legal approach to property rights. In history, the Laws of Hammurabi specify that in Mesopotamia, "if one man gives the gardener a field to create a garden, and the gardener creates and cultivates a garden for four years, in the fifth year the owner of the garden and the gardener divide the garden equally; the owner of the garden must

first choose his or her share". As can be seen from the above-mentioned rules, relations are regulated by law from the practical point of view. In this example, it is clear that not common property, but land planted with orchards, is regulated as an object of property relations.

For example, according to S. Ermolaev, common (joint or shared) ownership is characterized by the possession of property rights, that is, one property right (goods, including money and securities, other property, including property rights, works and services; results of intellectual activity and equivalent personalization tools (intellectual property)) belongs to one or more persons. For example, shared property of husband and wife (family legislation), application of the common property regime to the object of inheritance,

acceptance of inheritance and others.

However, although these property rights occupy a special place among the objects of civil law and historically serve to determine the regime of general property rights in relation to property at stages of development, they do not indicate the establishment of a specific property right in relation to construction objects. Legal norms or property rights in institutions are determined depending on the characteristics of each object.

According to L. Netishinskaya and N. Blagodarova, when analyzing property rights as an object of civil rights, the most extensive legal regulation for property rights is established for property rights (claims) in relation to collateral. The legislator provides for a number of restrictive provisions on the pledge of property rights. In particular, if there is an agreement between the right holder and its debtor on the prohibition of transferring the right to another person, the pledge of the property right (claim) is not allowed. Also, the requirements for the content of the agreement on the pledge of property rights are determined, in which the main conditions of the agreement must be agreed upon.

Although the application of property rights only to a mortgage acquires a certain meaning and gives the right holder certain powers, in determining property rights to the construction object, on the contrary, it serves to ensure the property rights of the pledge holder. In particular, there are many cases in practice where banks actively pledge construction facilities and attract loan funds.

There are different views on the characteristics of the the right to claim (demand) in legal literature. For example, the objects of civil law are the actions of things and others, and both correspond to the concept of property. Analysis of French legislation shows that, according to the general theory of obligations, the right to demand has become a value, a price. Because this right can be the subject of a transaction and, through this, enters civil circulation and becomes a value priced in money.

Since the purpose of any subjective right is to satisfy the interests of the authorized person, the right of claim must be important for the creditor. The right to claim is the part of the creditor's asset

in the obligation and has a certain property value for it. The ownership, use, and disposal rights of the owner, in our opinion, are the rights of the owner and constitute the content of the property right. At the same time, the right of operational management is not a property right, but a material right.

In some cases, the law directly links the fate of a legal relationship to an interest. For example, according to Paragraph 2 of Article 337 of the Civil Code, if the debtor has lost its significance for the creditor due to the delay in execution, s/he may refuse to accept the execution and demand compensation for damages. While the legislator speaks of "ahamiyat" (importance) in Uzbek, in Russian "интерес" corresponds to the word "interest". Therefore, if the creditor loses the interest in accepting performance due to the debtor's delay, s/he has the right to refuse to accept performance, which will lead to the termination (or modification) of the obligation. In this case, the possibility of terminating the obligation is directly linked to the loss of interest by law.

According to A.I. Ekimov, interest influences the legislative process, the content of objective legal norms, the emergence and realization of subjective rights, as well as the fulfillment of legal obligations. S. Sabikenov and N.A. Shaikenov argue that the mechanism for resolving conflicts of interest is based on the idea of legal regulation of social relations. According to them, the interest supported by law is legal, but it may not be provided by a certain subjective right of the person.

It is important to determine when property rights originate (arise) in relation to UCO. First of all, it requires the implementation of a number of organizational and legal measures before reaching this stage. This includes who owns the rights to the land plot, obtaining the right to build on the basis of a supervision agreement, pre-foundation preparation in construction - starting a "pod kotlovan" sale (starting sale at pre-construction stage), having clients, in some cases, the obligation to provide housing to needy citizens, and others.

Such kind of cases can also occur in law enforcement practice.

Construction company A. starts collecting funds from citizens by concluding a preliminary sales contract to begin construction. Naturally, when the funds received are insufficient, the company also receives a loan with the pledge of a certain part (storey or floor). Then, for example, a criminal case will be opened against that company for non-payment of taxes and the responsible persons will be deprived of liberty. In this case, how can citizens protect their property rights? Of course, such vital issues cannot be solved instantly, and the issues arising from this require a separate legal solution. First and foremost, it is necessary to determine what constitutes the essence (content) of property rights.

The current development of family law has already placed the marriage contract on the agenda. It is evident that not everyone signs this contract with bad intentions in advance, so the statistics on this contract can be said to be very low. However, if one realizes the importance and essence, there will also be enough motives to conclude a contract. For example, property under a marriage contract has a special legal regime. In this case, the spouse may be granted various powers of ownership or property rights. Most importantly, it is determined not by law, but by the terms of the marriage contract.

Furthermore, the author notes that if any document expressing property rights has a specific material basis, certification by duly formalized documents allows for the determination of the existence and subject of rights, then the state registration of property rights in the prescribed manner is of great importance in determining their place as an object.

Property rights will inevitably have their own "traces". Z. Amonov emphasizes that it should be in the form of a document, but the possibility of applying it specifically to UCO is somewhat complicated by the presence of a list for identifying the subject. According to the Decree of the President of the Republic of Uzbekistan (dated May 27, 2020) No. PD-4732 "On measures to regulate the process of construction of multi-apartment houses on a share basis" the electronic list is maintained in order to keep track of builders attracting funds for the construction on a share

(pre-payment of advances) basis and to prevent violations of the rights and legitimate interests of shareholders.

Materials on the problematic object are sent to the relevant law enforcement agencies in the manner prescribed by the authorized state body (paragraph 42 of the Regulation). As can be seen from the aforementioned legislative act, the law enforcement agency takes specific measures on the problematic object, but may also bring it to criminal liability.

However, at what stage do the property rights of buyer citizens exist? Does it exist in relation to UCO? This question should not remain unclear. For example, did UCO have specific clients before construction began? Does the right to build have value? The value of the current state of UCO should always be assessed objectively by expert assessors in accordance with relevant standards.

According to O. Okulov, the right to claim consists of the powers to receive more dividends, receive information, participate in management, and demand the return of the share. This situation primarily affects the right to participate in business entities, alimony, and inheritance. Therefore, Articles 23-24 of the Family Code define the content of the right to claim and the specifics of its implementation. In relation to the newly created object, the issue of property rights or the right to claim must be resolved.

According to N. Ashurova, since institutions are also allowed to carry out entrepreneurial activities, since the property basis of this activity and the income from it belong to the institution itself, the institution itself should be responsible for the obligation arising from this activity. In our opinion, although the main emphasis is placed on the property rights of the institution, which is considered a subject of limited property rights, there is a lack of clarity regarding property rights. After all, the institution also has a number of property rights, such as receiving dividends and creating commercial legal entities.

If we look at the experience of the Russian Federation, on July 29, 2017, a separate law on the protection of buyer share rights was adopted. This

law essentially protects buyers and citizens in the event that the construction company goes bankrupt. Therefore, according to the law, a separate compensation fund is created. This fund completes construction (for example, in cases of bankruptcy of the construction company), covers damages, monitors the payments by citizens, etc. The main point is to help in the event of bankruptcy. However, such a system existed before and functioned as the “Fund for the Protection of the Rights of Citizens Participating in Share Construction”. In our opinion, it is necessary to analyze the introduction of such funds in our country.

Today, the introduction of the escrow system is being more common. This system has been in use in many countries around the world for several years (for example, in the Russian Federation, Kazakhstan, Ukraine, Belarus, etc.). Its essence lies in the fact that, like a letter of credit, in this system, the buyer transfers money to a third party (escrow account), but the money is not directly transferred to the seller. The builder will be able to receive funds from escrow only after the house is fully built and the right of ownership is registered in the buyer's name.

According to G. Mamarayimova, based on this system, the money paid by the customer of the work, the customer of the service, or the recipient of the goods, on the other hand, is a legal mechanism that provides for the freezing of funds paid by third parties until the proper fulfillment of their obligations.

Article 860-7 of the Civil Code of the Russian Federation deals with an escrow account agreement. Under an escrow account agreement, a bank (escrow agent), if there are grounds provided for by law, opens a special escrow account for the purpose of recording or arresting the funds received from the account holder (depositor) for the purpose of transferring them to another person (beneficiary). The rights to the funds stored in the escrow account belong to the depositor until the beneficiary has the right to receive the funds in the account, and then to the beneficiary.

The active use of this mechanism in the conclusion and execution of civil contracts in our country

opens the way to prevent violations of property rights of our citizens, money payment and subsequent loss of property, and other unfair actions that may occur. Moreover, this will also contribute to a decrease in the number of disputes considered by courts.

The buyer's funds will be frozen until the construction is completed, while the builders will have the opportunity to more easily implement the construction at the expense of their loan funds. We believe that the new system will protect buyers from dishonest builders.

In fact, the possibility of using such legal mechanisms has existed for a long time.

For example, in accordance with Article 354 of the Civil Code, the parties may conclude a contract that is not provided for by law. Therefore, a contract can be concluded that can perform a task such as escrow. The main thing is to note that a whole system of ensuring the fulfillment of obligations by the party to the contract has been created over the centuries.

For example, the rights and interests of a buyer can be protected through the conclusion of a pledge, guarantee, surety, insurance, and other agreements.

More emphasis is placed on concluding a contract based on the psychological state. As a rule, we consider the easy terms of the contract to be convenient and conditional for us. The base of the iceberg is almost impossible to see. Similarly, even though prepayment is easy (or cheap) to make, the rest of it actually requires a large amount of money, interest (in most cases), and most importantly, a large “risk”.

That is, the buyer cannot foresee the risks in the contractual relationship. As a result, we become preoccupied with situations which cannot be solved instantly, conflicts, misunderstandings, and even blaming someone.

By this time, individuals whose goals are self-interested will have already earned their profits. However, it is implied that the participants in civil legal relations, to whom we frequently enter our daily lives or only meet (conclude a contract) once

or twice, act honestly, reasonably and fairly (Article 9 of the Civil Code).

Just as there are two sides to a coin, the interests of both the entrepreneur and the buyer must be ensured in this matter. However, the imposition of various stricter, large-scale requirements (for example, through licensing), such as the implementation of long-term construction, should not lead to a sharp increase in the cost of construction. On the other hand, it would be unfair to leave a citizen without a home and with a “big debt” on his shoulders after paying almost all the payments for the house to be built.

It is necessary to avoid the presence of only one-sided interests in the contract, to ensure that the conditions serve the interests of both parties, to ensure the timely and proper fulfillment of all obligations.

For example, how long will the housing under the contract be completed, if the builder fails to fulfill his obligations on time, what kind of legal measures will the citizen have? Otherwise, one can fall into a “trap” of one-sided interest.

In our opinion, it is necessary to create a theoretical basis for the system of protection of property rights, to establish in the legislation that property rights in relation to the UCO have a special assessment from an economic point of view. Otherwise, various sanctions and liability measures will hinder the enforcement of this right and the acquisition of the right.

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