

PARTICULARITIES OF DISPOSING OF INTEGRAL PARTS OF BUILDING UNDER CONSTRUCTION

Law, dated 15 December 2017, of the Republic of Azerbaijan amending the Civil Code (the “Code”) was passed. Section 144-1 dealing with particularities of disposition of integral parts of construction in progress is added to the Code. At the outset, the Code is complemented with the definition of buildings of construction in progress.

Under the Code, buildings, for which construction permit has been obtained, that were not commissioned according to the Code are considered buildings whose construction is in progress. As is known, serious problems were previously observed upon sale and purchase of dwelling (apartments) under construction as well as related to registration of ownership rights in such dwelling of individuals. Upon the sale and purchase of dwelling under construction, agreements were not notarised or registered in the register, as a result of which cases of selling the same dwelling to different buyers were occurring.

Registration of Land Plot for Construction and of Integral Parts of Building under Construction According to Shares of Divided Land Plot

Under the amendments, an owner of a land plot that obtained a permit to construct on it a building consisting of integral parts can divide based on a division plan agreed with the body of a local executive authority the land plot into shares proportionate to the number and area of integral parts of building to be constructed. Registration of ownership right is obtained for each of the shares and integral parts of a building under construction attached to such shares that appeared following the division. It is contemplated that the manner of agreeing the mentioned division plan will be determined by the Cabinet of Ministers (which, to date, has not been adopted).

Only upon registration in the register of immovable property of ownership right, may the owner dispose of each of the shares created pursuant to the division. In this case, ownership right in each divided share will be registered and cases of inappropriate disposition are expected to be avoided. Agreements for disposition of shares of land plot created pursuant to a division plan and of integral parts of building under construction attached to such shares must be notarised and security note made in favour of persons acquiring such parts.

The agreement to be notarised must include terms of sale and purchase of shares of the land plot, where the building under construction is located and whose relevant integral parts are attached to, and obligations related to making the security note of the owner of the land plot and of a person acquiring right in the land plot. Contracting relations arise between a person acquiring an integral part of a building under construction and owner (seller) of the land plot where the building is located; in such relations, the owner (seller) of the land plot is considered a contractor while the person acquiring an integral part of the building whose construction is in progress is considered a customer.

The agreement also incorporates the obligations of the seller (contractor) to complete construction in an agreed time and obtain a permit to use it (commissioning) and of the person acquiring the integral part (customer) to pay the seller in timely instalments the agreed amount.

Among other provisions, the agreement must include consents of the owner of the land plot to make a security note in relation to the land plot in its/his/her ownership and of the person acquiring right in the land plot to make in its/his/her favour the security note in relation to that land plot. Provisions concerning consent of the owner of the land plot to pass the rights arising under the agreement upon completion by

it/him/her in time determined by the agreement of construction of the building and obtaining commissioning of it to the person in whose favour the security note is made must also be incorporated.

Upon notarisation of the agreement, the notary must immediately send it in electronic form through information systems and in certified written form through registered mail dispatch to the register of immovable property as well as in written form through registered mail to the owner of the land plot. The agreement is considered an application to make changes in security note made in the state register of immovable property and relevant registration actions are taken based on the agreement. The security note is made in the state register of immovable property in three days and the security note is created upon having been registered in the register.

No subsequent security note can be made for a land plot as long as the security note made in the state register of immovable property for the plot remains effective.

Payment of Price of Dwelling

Another novelty introduced to the Code relates to impossibility of imposing on a buyer of dwelling in building under construction of an obligation to pay in full the purchase price of dwelling before completion of the construction. Under Sub-Section 648.3 that is introduced to the Code, should a subject-matter of a sale and purchase agreement include, among other items, shares of a land plot, to which integral parts of a building located on the plot are attached, a buyer cannot be required to pay in full such shares' purchase price before completion of the construction. In other words, payment of a purchase price (fee) upon contracting relationship arising in disposition of shares, to which integral parts of a building under construction located on the land plot are attached, can be required on the following conditions and must be made in instalments according to stages of the construction:

- agreements regarding disposition of shares created according to a division plan in the owned land plot and of integral parts of building under construction attached to such shares have been notarised; and
- security note in favour of a buyer of shares, to which integral parts of a building located on the land plot are attached, has been made in the state register of immovable property.

Unless the agreement provides for other stages and instalments, payment of the purchase price (fee) is made by the stages of the construction in instalments not exceeding the following percentages:

- following the start of excavation works – 30 per cent of the contract price;
- upon completion of exterior and interior walls and roof of the building – ten per cent of the contract price;
- upon completion of installation of roof tops and discharge (gutters) – eight per cent of the contract price;
- upon completion of installation of heat supply systems – three per cent of the contract price;
- upon completion of laying water supply line – three per cent of the contract price;
- upon completion of connecting electricity lines – three per cent of the contract price;
- upon completion of installation of windows (including installing window glasses) – ten per cent of the contract price;
- upon completion of internal plastering (puttying) – six per cent of the contract price;
- following completion of flooring of areas servicing more than one integral part of a building that has more than one such part – three per cent of the contract price;

- upon completion of exterior works – ten per cent of the contract price;
- upon completion of construction of facilities servicing the building built separately from it, including water tank – nine per cent of the contract price; and
- upon full completion of the building and issuance of permit to use it (commissioning) – five per cent of the contract price.

The amendments highlighted above come into effect 1 July 2018. The amendments do not clarify if they can have a retroactive effect, *e.g.*, extending to construction completed, but not commissioned.

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