



On civil turnover of unfinished construction projects

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Annotation: In article debatable questions of a legal regime of objects of incomplete building are investigated. Having analyzed the points of view of various scientists and judiciary practice the author comes to a conclusion that the object of incomplete building is object of real estate and can be in a civil turn. Necessity of completion of a blank for the right concerning the ground area under such object is proved.

Keywords: object of incomplete building, real estate, building successively, the cadastral account, transaction.

In the scientific literature, there is an opinion that “an unfinished construction object is a newly created (reconstructed) real estate object that has not been put into operation and not registered in the cadastral or other register, the ownership of which is subject to state registration based on the will of the owner with the attachment of title documents for land plot, construction permits, design documentation and documents containing a description of the unfinished construction project.” Other authors note that an unfinished construction project is understood as a newly created property that has not yet been accepted for cadastral and technical registration, the right to which has not yet been registered in the prescribed manner.

In his other works, he writes that an unfinished object exists from the moment “when actions began on the construction site directly aimed at creating the object and leading to such a change in this land plot that it becomes inseparable from this plot without significant damage to the achievement of the goal creation of the planned object. In this sense, an equipped construction site, geodetic work, fence construction, etc. cannot be considered a real estate property. However, from the moment the excavation of a pit begins or at least one pile is driven in accordance with the project, the object can be recognized as a real estate object as an object of unfinished construction.” Meanwhile, the mere presence of a pit can hardly be considered a sufficient basis for registering a right ownership of an unfinished construction project as real estate. The analysis of various points of view regarding the



concept of an unfinished construction object can be continued, however, it is necessary to highlight the main thing that most researchers have in common - this is the uncertainty of the civil legal status of unfinished construction objects, the inconsistency of the regulatory possibility for them to act as the object of a lease, mortgage and a number of other civil law contracts. Let's try to explore the legal nature of the object of civil rights under consideration with the substantiation of our understanding of its concept and essence. There is no consensus of opinion on this issue in the scientific literature. Thus, some authors believe that unfinished construction objects that are firmly connected to the land belong to real estate and can be the object of civil circulation only subject to state registration of the corresponding property right to them. Such objects, which do not have a strong connection with the land, are considered as movable property - a collection of building materials.

We emphasize that the building as a whole is registered as an object of unfinished construction, and not individual premises in it. At the same time, the building may consist of premises intended for use as offices, retail space, etc. The premises satisfy the needs of the owner himself when carrying out a specific type of business activity or serve to generate income by transferring them under a lease agreement. In practice, such premises are not registered as objects of unfinished construction until the building is put into operation. If an unfinished construction project can be the subject of a purchase and sale agreement, then individual premises in it cannot. Firstly, they do not have the degree of individualization necessary to complete transactions for their alienation. Secondly, upon completion of construction (reconstruction), the building as a whole, and not its individual parts (premises), is put into operation and accepted. Thirdly, until the completion of construction it is impossible to register individual premises in the building.

Indeed, real estate has always been treated as a special kind of product to which ordinary rules do not apply. On the one hand, they pointed to economic reasons (the high cost of real estate), on the other hand, they emphasized their social significance. Because of this, the need for state participation in regulating the real estate market was justified. Such regulation consists primarily in the system of state registration of rights to real estate and transactions with it. This procedure is designed to ensure the interests of market participants, the state,



local authorities and other legal entities. Thanks to this system, the rights of property owners were confirmed by state registration.

If we compare the rules on purchase and sale and on leasing from the point of view of the possibility of selling or leasing a future thing and the extension of this rule to objects of unfinished construction, it should be noted that there is no such article in the chapter on leasing. In addition, when buying and selling, the economic interest consists in acquiring ownership of the object (in the future), and when renting, in temporary (short-term or long-term) use for its intended purpose. In practice, sometimes there is a need to conclude an agreement that will allow establishing lease relations regarding real estate to be created in the future. However, the choice of legal forms in this case is small, and the issue is resolved by concluding a preliminary agreement.

At the same time, the owner of an unfinished construction project, before registering ownership of the completed project, is interested in concluding agreements on the transfer of premises into the possession of tenants. In some cases, a lease agreement is drawn up for a period of less than one year (such agreements do not require registration), in others, preliminary lease agreements are concluded (for a long term), and sometimes both.

However, too broad application of provisions aimed at including unfinished real estate in circulation may also contribute to dishonest behavior by participants in civil transactions. Today there are attempts to withdraw the debtor's funds by concluding lease agreements for unfinished objects. In some cases, this leads to bankruptcy and infringement of the rights of such a tenant's creditors, in others, in this way it is possible to create the appearance of debt, which allows the lessor to have a number of advantages over other creditors whose claims are smaller. When using the design of a preliminary agreement for relations arising regarding the purchase, sale or rental of unfinished real estate, it is important to understand for what period this agreement will be valid and what consequences occur if the period expires.

A different position is taken by the courts, which recognize such agreements as valid. This approach can currently be considered dominant. It is more in line with the interests of business entities who feel the need to conclude agreements aimed at establishing rental relations regarding unfinished (or completed, but not put into operation) real estate



properties. Courts consider such disputes not at the stage of concluding contracts, but much later, in the process of their execution, therefore they strive to ensure a balance of interests and protection of the rights of bona fide participants in these relations. At the same time, courts experience significant difficulties in justifying the validity of such agreements. The contradictory wording of legislation, its lack of clarity, as well as gaps harm the stability of economic relations. Any investment is associated with risk, so the interest and activity of investors is determined primarily by the protection of invested funds, both from commercial and non-commercial risks. Only the presence of a favorable investment climate, the constituent elements of which are stable legislation, a certain procedure for resolving investment disputes, as well as effective legal protection, will ensure the attraction of investment in the economy.

One of the central places in the theory and practice of civil law regulation of property and non-property relations of modern Russian society is occupied by the issues of regulation of specific types of objects of civil rights. Being the basis on which actual and regulating legal relations grow, economic goods have their own essential features, without taking into account which effective legal regulation of relations arising in connection with these goods is impossible. These statutory features subsequently influence the entire mechanism of legal regulation in which certain specific benefits are involved. One of the most prominent places among the objects of civil law is occupied by real estate. However, despite the importance and prevalence of real estate transactions in civil circulation, and a significant number of regulations devoted to the circulation of real estate, it cannot be said that in this area of legal regulation the legal technology of laws has reached perfection, and all practical problems that have arisen since adoption of the Civil Code. Since the appearance in the domestic civil legislation of the norm defining the concept and characteristics of real estate, the legal definition of real estate, constructed according to the principle of enumeration traditional for our legislation in this area, has been criticized, since it does not have the harmony of classification criteria, the clarity of the characteristics by which property could be classified as real estate, and the list of transfers itself was far from perfect and required a number of both changes and additions, as a result of which certain changes were repeatedly made to Article 130 of the Civil Code. However, as time has shown, even securing an object



as real estate at the level of the Civil Code does not make it easier to understand its place in the classification of objects and the specifics of legal regulation. This happened with the enterprise as a property complex, and the same happens with an unfinished construction project.

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