

The title to a parking place in case of the developer's bankruptcy

It is quite a reverential and exciting experience to choose a developer company that can only be compared with the choice of a future bride. In the absence of valuation in the modern economic market and inappropriate policies for the part of persons with significant control, investment may not live up to expectations. As far as only a developer is concerned, one of the negative consequences is the introduction of bankruptcy proceedings against it, since it is not known whether a buyer of premises gets back the funds paid, how much, or it should be forgotten.

In order to implement the state policy to support the protection of the rights and interests of interest holders, the legislator has developed special conditions for bankruptcy of developers. Due to the long-term nature of bankruptcy, a step was made to accelerate the process of returning funds or apartments to equity holders; namely, since 1 January 2018, financial recovery and supervision procedures have not been applied to developers.¹ If the applicant's claims can be justified, the Arbitration Court immediately introduces the bankruptcy proceedings and approves the bankruptcy trustee, and if there are circumstances showing that it is possible to satisfy the claims of creditors, and the corresponding application of the arbitration manager, it enters the external administration procedure.

Of course, this step of the legislator is consistent with the development of state policy to protect citizens from economic instability. However, the introduction of amendments to regulatory instruments is not always accompanied by the rapid introduction of amendments to some others.

Since 1 January 2017, a car parking space has been legally recognised as an independent property item, which has special boundaries in the design documentation of a building or structure, and which is subject to both cadastral and state registration.² However, from the previous practice, the right to a car parking space was registered in Rosreestr (Federal Agency for State Registration, Cadastre, and Cartography) as a share in the right of ownership. The legislator has taken this practice into account, therefore, the current procedure for registering a car parking space involves the registration of a separate non-residential premise.

It is assumed that when the status of an independent object was assigned to a car parking space, all unfavourable outcomes were taken into account by the legislator, but for almost two years, until 25 December 2018, during the introduction of the bankruptcy procedure of a developer, it was not common to transfer the independent property item, a car parking space to the buyer.

In accordance with para. 7 clause 1 of Art. 126 of the Bankruptcy Law from the date the arbitral tribunal decides to declare the debtor bankrupt and initiate bankruptcy proceedings, all the claims of creditors shall be resolved in the bankruptcy case. The purpose of introducing this rule is to prevent the multiplicity of court rulings determining the fate of the bankrupt's single bankruptcy estate as well as reducing the time for bankruptcy proceedings.

¹ On Insolvency (Bankruptcy)" [Electronic resource]: federal law dated 26 October 2002 No 127-FZ // Corpus of legislative acts of the Russian Federation. 2002, No 43. Article 4190 (as amended on 7 March 2018). Access from the Consultant Plus legal reference system.

² Civil Code of the Russian Federation (Part 1) [Electronic resource]: federal law dated 30 Nov 1994 No 51-FZ // Rossiiskaya Newspaper. 1994. No 238-239 (as amended on 29 July 2017). Access from the Consultant Plus and On State Registration of Real Estate legal reference systems [Electronic resource]: federal law dated 13 July 2015 No 218-FZ // Corpus of legislative acts of the Russian Federation. 2015, No 29 (Part I). Art. 4344 (as amended on 03 August 2018). Access from the Consultant Plus legal reference system.

The population's low level of legal literacy led to the fact that citizens during the bankruptcy proceedings of the developer applied to the courts of general jurisdiction for the protection of their rights. Filing a claim for the declaration of title to non-residential premises and transferring it to the interest-holder in bankruptcy proceedings led to the termination of proceedings in accordance with Article 220 of the Civil Procedure Code of the Russian Federation, in view of the bankruptcy proceedings of the defendant in the Arbitration Court (Appeal Ruling of the St. Petersburg City Court dated 18 January 2018 No 33-543/2018 concerning the case No 2-8820/2017, the Appeal Ruling of the Moscow City Court dated 02 April 2012 in the case No 11-2094 etc.). The courts unanimously interpreted the impossibility of considering such a claim in court – the claim consideration will lead to a violation of the debtor's and its creditors' rights.

The logic of the arbitration courts was as follows. It was possible to transfer the real estate item to the buyer only if it had the right to own the residential property. It was due to the social focus in the policy of the Russian Federation, as a state designed to primarily create conditions that ensure a decent life for a person, in accordance with Art. 7 of the Constitution of the Russian Federation and the constitutional human right to housing, in accordance with Art. 40 of the Constitution of the Russian Federation.

The creation of a register of claims for non-residential premises was not provided for by law in accordance with the provisions of Article 201.1 of the Bankruptcy Law. Since the initiation of bankruptcy proceedings, the non-monetary claim for the transfer of non-residential property has been transformed into a monetary claim for the return by the debtor of the amount of money received under the contract. The reverse approach would lead to the fact that the claims of the buyer of non-residential premises, that are of a register nature, will be satisfied outside of normal schedule, mainly before the claims of other bankruptcy creditors, which contradicts the bankruptcy law. A plaintiff, who has a claim for a debtor to recognise the title to non-residential premises, is not a construction participant with priority over other creditors, which is consistent with the position of the Supreme Court of the Russian Federation expressed in decision No 305-ES17-2507 dated 9 January 2018. By virtue of paragraph 2, clause 1 of Article 201.1 of the Bankruptcy Law, only an individual, a legal entity, the Russian Federation, a constituent entity of the Russian Federation or a municipality having a claim to a developer to transfer housing or a monetary claim may be recognised as such a participant.

Since 25 December 2018, the opinion of the legislator has fundamentally changed. If earlier the transfer of a car parking space violated the principle of equality of creditors-interest holders, now there is no such violation, the buyer can get a car parking space in the bankruptcy procedure.

The legislator did not explain the change in their legal position; however, you can think of the triumph of the principle of justice and the adoption of the position of buyers of non-residential premises who have filed numerous appeals with government bodies including equity holders of the Urban Group.

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