

Unfair “Housing Regulation of Major Construction” in the Russian Federation

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ABSTRACT

This research analyzes the illegal and unreasonable practice of court rulings that aim to accelerate the major construction of problematic long-delayed apartment blocks in the Russian Federation. The authors express their critical attitude to the widespread wrongful approach that violates the laws in effect and allows courts to apply branch-specific legal regulation to public relations, which should be regulated by different laws. The authors support the supremacy of law over the administrative and economic expedience, which often prevails in modern Russia, and analyze the legal status of the victims of unscrupulous real estate developers, including that of persons who took mortgage loans and bore additional costs due to increased interest rates, and the financial losses of banks that were forced to create additional reserves for potential losses from bad debts with security in the form of apartments in buildings, the construction of which was delayed indefinitely.

KEYWORDS

major construction, apartment block,
unfinished apartment, homeowner association,
urban planning law

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Introduction

In the Russian Federation, apartment blocks are often constructed jointly; to that end, a group of citizens – future apartment owners – pays funds by instalments to the real estate development organization, which gradually constructs and commissions, in due time or with delays, a finished residential building [1.10.14]. In the Russian Federation, the construction of residential buildings is often delayed; at that, the real estate development organization often vanishes, having used a fraud scheme or goes bankrupt in accordance with the due course of law [1.15.16]. The term “hoodwinked investor” has emerged in the 1990s and is in active use nowadays. This term means a citizen who owns an

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apartment in an apartment block, the construction of which is not finished and delayed indefinitely [12.13.17]. As of January 1, 2016, Russia officially had 510 long-delayed buildings and 42 thousand victims of unscrupulous real estate developers. According to the estimations of this research, the number of victims is at least twice as great, because not all apartment blocks under construction are considered problematic, despite their construction lasting decades.

The most unprotected demographic in this case are the investors who purchased apartments on loaned funds and mortgaged to the banks their claim to the unfinished apartments [14.18.19].

According to some estimations, the credit purchase of accommodation in buildings under construction, the so-called “new homes market mortgage”, accounts for 20-30% of the mortgage market in Russia [12]. At that, it is worth noting that banks call the period from the conclusion of the agreement on the joint development on credit funds to the conclusion of mortgage for the finished apartment the investment period; the bank interest for such a loan is one-two points higher, which, considering the large size of mortgage loans, has a significant effect on the size of the monthly payment.

For the borrower who invested credit funds into a long-delayed building project, the investment period can last for decades. During this period, this person not only is unable to live in the new apartment, but also bears considerable additional costs that will not be compensated for in the future. If the construction lasts for several years, the banks also sustain financial losses, since the declining quality of loan security forces them to increase the reserves for potential losses from bad debts that were created for such loans [13].

In 2013, the Ministry of Regional Development of the Russian Federation approved the criteria for classifying citizens, whose funds were used to construct apartment blocks and whose rights were violated, as aggrieved persons, as well as the rules for registering citizens, whose funds were used to construct apartment blocks and whose rights were violated [2]. However, if the apartment block has a real estate development company, such a building is not considered problematic even if it has been under construction for 10 years.

Such an apartment block has existed since 2004 in the center of Volgograd [8]. At that, the responsible real estate development company is a thriving federal treasury agency. According to Part 1, Article 6 of the Federal Law dated 30.12.2004 No. 214-FZ (revised on 01.05.2016) “On the Participation in the Joint Development of Apartment Blocks and Other Real Estate and on the Amendments to Certain Laws of the Russian Federation”, the developer shall transfer to the participant of joint development the object of joint development within the period specified in the respective agreement that shall be single for all participants of joint development, to whom the developer is obliged to transfer the objects of joint development that are part of an apartment block and (or) other real estate or part of a block-section of an apartment block with a separate entrance hall with access to the common area, with the exception of cases indicated in Part 3 of this article. According to this provision, the owners of real estate in the abovementioned apartment block who purchased accommodations in the building also purchased the requirements to the developer to finish the construction, which are provided for in the agreement on joint participation in construction. However, as of July 2016, the abovementioned apartment block has not been finished or commissioned and the

objects of joint participation in construction have not been transferred from the developer to the participants.

Aim of the Study

To investigate the legal regulation of affairs related to residential major construction.

Research questions

What falls within the scope of the homeowner association competence?

What legal status do homeowner associations have?

Method

The methodological framework of the research included studies on sociology, philosophy, economics, and the general theory of law. The research used methods of logical and systems analysis, historical-legal and comparative-legal analysis, fundamentals of housing law, and modern achievements of other legal sciences.

The regulatory framework included the generally accepted principles and standards of international law, provisions of the Constitution of the Russian Federation, rules of the Housing Code of the Russian Federation and the Civil Code of the Russian Federation, and the Decrees of the Government of the Russian Federation.

The empirical framework of the research included published case materials of the Volgograd city district court in regards to case No. 2-4393/2015 dated 30.11.2015.

Data, Analysis, and Results

Having ceased construction of the object in 2008, the developer announced to the investors that the funds that the investors paid in full under the agreements on joint participation were not enough to finish and commission the building. The developer has been idle since then. From 2009 to 2013, the owners of unfinished apartments filed dozens of requests to authorities of all branches and levels, as well as to law enforcement agencies; however, this had no effect on the revival or completion of the construction of their apartment block. In 2013, a number of owners of unfinished apartments (they turned out to be in the majority in terms of the total area of residential and other premises) established a homeowner association (HA). The establishment of this legal entity was approved and supported by the Oblast Administration.

A homeowner association is legal only in a residential building, i.e. in a building that has been finished and commissioned according to the urban planning rules [1]. The existence of such an association in a building under construction is illegal due to the absence of the building itself and the fact that the citizens are owners of unfinished apartments, but not owners of the accommodations.

According to Article 135 of the Housing Code of the Russian Federation [3], a homeowner association is a non-profit organization, an association of accommodation owners in an apartment block aimed at the joint disposal of their property in the apartment block or, in cases specified in Part 2, Article 136

of the Housing Code of the Russian Federation, the property of accommodation owners in several apartment blocks or the property of owners of several residential buildings, possession, use, and, within the limits established by the law, disposal of communal property in an apartment block or joint use of property owned by the owners of accommodation in several apartment blocks or property owned by the owners of several residential buildings, creation, maintenance, preservation, and accession of such property, delivery of public utility services to persons that use the premises in said apartment blocks or said residential buildings in accordance with this Code, and other activities aimed at managing apartment blocks or jointly using the property owned by the owners of accommodations in several apartment blocks or the property of owners of several residential buildings (Part 1, Article 135). The Articles of Association of a homeowner association are approved at a general meeting that is held in accordance with Articles 45-48 of the Housing Code of the Russian Federation by a majority of votes of the total number of votes held by the owners of accommodations in an apartment block (Part 2, Article 135).

According to Article 3 of the HA Articles of Association, the purpose of the HA includes the guarantee of construction completion and commissioning of the apartment block located at Volgograd, "NUMBER" "NAME" Str., conclusion of agreements with natural persons or legal entities in accordance with the organization's purpose, protection of the rights and interests of the association within the limits of its competence, including the representation of the accommodation owners in relationships with third parties in matters related to the activity of the association, completion of construction, and commissioning of the apartment block.

According to Paragraph 5.3 of the HA Articles of Association, in case of nonperformance or improper performance by the owners of accommodations in an apartment building of their obligations under the participation in the gross expenditures (including those on the construction of the building), the HA has the right to demand a refund of mandatory payments from the owners of accommodations and payments from association members through legal action. Meanwhile, according to the information about the legal entity – the HA – provided by the Unified State Register of Legal Entities, the main activity of the HA is to manage real estate, while the additional activity is to rent its own real estate.

The Unified State Register of Legal Entities does not give any further information about the HA. It is worth bearing in mind that during the state registration of a legal entity, according to Paragraph 4.1 of the Federal Law dated 08.08.2001 No. 129-FZ (revised on 02.06.2016) "On the State Registration of Legal Entities and Individual Entrepreneurs", the constituent documents are not checked for compliance with the law, which is why the articles of association of legal entities can feature any provisions. However, the court is not governed by everything that is written in the articles of association (nobody can prohibit the HA from including in its Articles of Association, for instance, a provision that grants the HA the right to collect individual income tax, however, this provision will have no effect due to its noncompliance with the law). Therefore, by making a decision in regards to the necessity of completing the construction of the apartment block and charging the owners of unfinished apartments with the respective expenditures, the general meeting of owners of accommodation in

the apartment block already exceeded its competence. Consequently, the HA has no right to file a lawsuit against an owner of an unfinished apartment who considers the HA an illegitimate entity and an inappropriate plaintiff.

According to Article 15 of the Housing Code of the Russian Federation, objects of housing rights are residential accommodations. Residential accommodations mean isolated premises that are real estate and suitable for permanent dwelling (comply with the established sanitary and technical rules and standards, as well as other legal requirements). The procedure for recognizing premises as residential accommodations and the requirements that residential accommodations have to meet are established by the Decree of the Government of the Russian Federation dated 28.01.2006 No. 47 "On the Approval of the Provision for Recognizing Premises as Housing Accommodations, Recognizing Housing Accommodations as Unsuitable for Dwelling, and Recognizing an Apartment Block as Failing and Subject to Demolition or Reconstruction" [4]. According to Paragraph 2 of said provision, operating premises located in the territory of the Russian Federation are considered residential accommodations regardless of their form of ownership. It is worth stressing that according to Paragraph 4 of said provision, residential accommodations are isolated premises intended for the dwelling of citizens that are real estate and suitable for dwelling.

According to Paragraph 1, Article 44 of the Housing Code of the Russian Federation, the meeting of owners of accommodations in an apartment block is the agency of administration in the apartment block. The general meeting of owners of accommodations in an apartment block is held to manage the apartment block through the discussion of issues on the agenda and making decisions regarding the issues put to vote. According to Paragraph 2, Article 44 of the Housing Code of the Russian Federation, the competence of the general meeting of owners of accommodation in an apartment block does not include the issues related to the erection of a major construction object that should be commissioned as an apartment block.

According to Paragraph 1, Article 135 of the Housing Code of the Russian Federation, the HA exists to jointly manage communal property in an apartment building; however, the erection of a major construction object by the homeowner association for the purpose of commissioning it as an apartment block is illegal. Since the object of major construction was not finished or commissioned, the apartment block at the above address is nonexistent from the legal perspective of the Housing Code of the Russian Federation. Under such circumstances, the decisions of a number of owners, formalized as minutes of meetings of owners of accommodations in the apartment block under construction, are illegal; therefore, they exceed the scope of regulation of the Housing Code of the Russian Federation and the Urban Development Code of the Russian Federation [5]. Other regulatory legal acts in effect also do not feature rules that would oblige the owner of an apartment in an unfinished apartment block under construction to act upon the decision of a group of other owners of accommodations in the same apartment block under construction, who united into a certain organization.

Part 2, Article 44 of the Housing Code of the Russian Federation, which defines the concept of a general meeting of owners of accommodations in an apartment block, does not mention the possibility of such a meeting making the



decision in regards to the completion of the building's construction; references to Paragraph 5, Part 2, Article 44 of the Housing Code of the Russian Federation or the HA Articles of Association change nothing, since the Housing Code of the Russian Federation does not give such authority to the meeting of owners. Meanwhile, the HA Articles of Association are applicable only if they do not contradict the law.

According to Part 3, Article 30 of the Housing Code of the Russian Federation, the owner of accommodations is responsible for maintaining said accommodations and, if said accommodations are an apartment, to maintain the communal property of owners of accommodations in the respective apartment block. Whether or not an apartment block meets the criteria of Article 15 of the Housing Code of the Russian Federation is determined according to Article 55 of the Urban Development Code of the Russian Federation by granting the developer a permit to the commissioning of the object [5]. The commissioning permit is a document that certifies the completion of construction or reconstruction of the major construction object in full and, according to the construction permit, the compliance of the constructed or reconstructed object with the plan of the land plot or, in case of construction or reconstruction of infrastructure lines, with the design plan of the area, the area demarcation project, and design documentation.

The apartment block located at the above address has not been completed; the developer did not obtain a commissioning permit. Therefore, said apartment block and its constituent premises are not considered residential accommodations. The housing law is not applicable to the owners of such premises. Despite the fact that Article 3 of the HA Articles of Association notes that the purpose of the HA includes the guarantee of construction completion and commissioning of the apartment block located at the above address, this goal cannot be achieved contrary to legal rules and the interests of citizens.

According to Article 36 of the Housing Code of the Russian Federation, the owners of accommodations in apartment blocks own the communal property in the apartment block on joint shared property basis. The owners of accommodations in the apartment block own, utilize, and dispose of the communal property in the apartment block within the limits set by the Housing Code of the Russian Federation and the civil law. By the implication of said article of the Housing Code, an unfinished construction object is not considered the communal property of owners, since, firstly, said real estate is not an object of housing rights under Article 15 of the Housing Code of the Russian Federation and, secondly, the communal property assets are approved by the decision of the general meeting of owners of accommodations in an apartment block. The HA cannot make such a decision of owners, because it is impossible to specify the communal property assets and their scope in an unfinished building. The list of objects that are part of the communal property of an apartment block is provided in Paragraph 1 of the Communal Property Maintenance Rules [6].

The communal property assets include:

a) premises in the apartment block that are not part of apartments and intended to service more than one residential and (or) non-residential premises in an apartment block (hereinafter referred to as communal premises), including inter-apartment landings, staircases, elevators, elevator and other shafts, corridors, pram storage rooms, lofts, mechanical floors (including built-in

garages and vehicle areas, workshops, and mechanical lofts constructed at the expense of the owners) and mechanical basements hosting engineering communications, other equipment (including boiler-rooms, heat distribution stations, and other engineering equipment) that serves more than one residential and (or) non-residential premises;

b) rooftops;

c) envelope bearing structures of an apartment block (including the foundation, bearing walls, floor slabs, balcony and other slabs, bearing pillars, and other envelop bearing structures);

d) envelope bearing structures of an apartment block that service more than one residential and (or) non-residential premises (including windows and doors of communal premises, railings, parapets, and other envelop bearing structures);

e) mechanical, electrical, sanitary-technical, and other equipment located inside the apartment block outside or inside premises that serve more than one residential and (or) non-residential premises (apartment);

f) the land plot on which the apartment block is located and the borders whereof are determined based on the information in the state cadaster, including the greenery and beautification elements;

g) other objects intended for servicing, operating, and beautification of the apartment block, including transformer substations, heat supply stations intended to service a single apartment block, communal parking lots, garages, playgrounds and sports grounds located within the borders of the land plot, on which the apartment block is located.

The determination of the communal property assets uses information about the rights to real estate that is classified as communal property, which is provided by the Unified State Register of Rights to Real Estate and Deals Thereon and the State Cadaster [6].

Having illegally obtained the status of a legal entity with special legal powers and having basically turned into a quasi-developer in 2014, the HA accepted funds from its members, entered into agreements with contractors, accepted and paid for their work. The HA took legal action at regular courts for the recovery of funds from the owners of unfinished apartments who were not members of the HA and considered the HA illegitimate. In court, the HA declares demands for the recovery of expenses on the completion of construction and commissioning of the apartment block at the above address. All district courts of Volgograd ruled such cases with the participation of the HA in favor of the HA, thus granting judicial legitimacy to this legal entity. In one of the rulings, the district court qualified the declared demand as a demand for recovery of expenses on the maintenance of the communal property in the apartment block; however, judging from the formulation of the lawsuit of the HA, the demand is different – for the recovery of expenses on the completion of construction and commissioning of the apartment block.

The nonidentity of these demands follows from the fact that said demands:

- have different grounds and different legal nature: expenses on the maintenance of communal property of the building are based on *jus in re* and emerge due to the incurrance of the person's right of ownership (Article 210 of the Civil Code of the Russian Federation [7]), while the expenses on the completion of construction and commissioning of a building emerge within the

framework of the law of obligation (construction contract or participatory construction relations);

- have different subjective elements (obligations of communal property maintenance emerge between the co-owners of such property, while obligations of construction completion and commissioning of the building emerge between building owners (members of participatory construction or investors) and contractors);

- expenses on the maintenance of communal property in an apartment block are only possible if the apartment block is a residential building, rather than a major construction object, when the communal property assets and their specific scope is determined according to the Communal Property Maintenance Rules [6].

Apparently, the district court misinterpreted the demands of the plaintiff – the HA (replaced them by arbitrarily interpreted demands that did not match the text of the HA lawsuit) and applied inappropriate regulations: Article 39, Part 5 Article 46, Paragraph 3 Article 137, Paragraph 8 Article 138, and Article 145 of the Housing Code of the Russian Federation; Articles 210 and 249 of the Civil Code of the Russian Federation, since these regulations can be related to expenses on the maintenance of the communal property in an apartment block, but are unrelated to the demands declared by the HA [8].

The demands declared by the HA in the lawsuit, related to the need to complete the construction and commission the apartment block, should be made on those responsible for its construction and commissioning; the owners of apartments under construction have no such responsibility either according to the law or under any agreement. Filing such suits against the owners of unfinished apartments is essentially an element of the mechanism for shifting the blame for the unfinished construction, responsibilities, and expenditures from the developer to the owners of the apartments in this building.

In addition, the district court misinterpreted the actions of the HA as actions for another's benefit. They do not correspond to the conditions of actions for another's benefit, which are established in Paragraph 1, Article 980 of the Civil Code of the Russian Federation, because in this case, there is no grounds for such actions (neither the damage to the property of the unfinished apartment's owner, which the HA plaintiff supposedly attempted to prevent, nor the obligations that the HA performed for the owner of the unfinished apartment were determined). Obviously, the district court unreasonably applied the regulations of substantive law from Paragraph 1, Article 984 of the Civil Code of the Russian Federation; in other words, it applied an inapplicable law [8].

According to Article 980 of the Civil Code of the Russian Federation, spontaneous agency for the purpose of preventing damage to a person or property, performance of his or her obligations or in his or her other legal interests (actions for another's benefit) should be based on obvious benefit or advantage and actual or probable intentions of the interested person and with due appropriate care and diligence. According to Paragraph 1, Article 984 of the Civil Code of the Russian Federation, the necessary expenses and other direct damages sustained by the person who acted for another's benefit in accordance with the rules established by the law, shall be compensated by the interested person. The HA plaintiff acted upon the decision of the owners of

accommodations in an unfinished apartment block. Hence, the provisions of Articles 980 and 984 of the Civil Code of the Russian Federation could not be applied when hearing said civil case and could not be the basis for the ruling [9].

The district court wrongfully ruled that the actions of the HA plaintiff were taken for the benefit of all owners of residential and non-residential premises in the apartment block, aimed at serving the legal interest of the members of participatory construction, including the defendants, taken based on obvious benefits of the owners of apartments in the residential building, for the purpose established in the Articles of Association of the HA plaintiff, and within the scope of powers, delegated by the general meeting [8].

Since Article 46 of the Housing Code of the Russian Federation has it that the decision of the owners of accommodations in an apartment block located at said address constitutes obligations for all owners of accommodations, this decision is subject to the transaction law. Consequently, the district court applied the provisions of Article 166 of the Civil Code of the Russian Federation wrongfully. According to Part 4, Article 166 of the Civil Code of the Russian Federation, the court has the right to apply the consequences of an invalid void transaction at its discretion, if it is necessary to protect public interests or in other cases specified by the law. According to Article 168 of the Civil Code of the Russian Federation, a transaction that violates the requirements of a law or other legal act and encroaches upon the rights or legally protected interests of third parties is void if the law has it that such a transaction is disputable or requires the application of other consequences of the offence, unrelated to the transaction invalidity.

Any decision of the meeting of owners of accommodations in an unfinished apartment block is void due to Article 168 of the Civil Code of the Russian Federation, since such a decision exceeds the authority of the general meeting of accommodation owners, which is specified in Article 44 of the Housing Code of the Russian Federation. Due to the misinterpretation of Article 44 of the Housing Code of the Russian Federation, the district court made a ruling that contradicted the legal standards, which violated the principles of a legal court procedure [8].

It is worth bearing in mind that according to Article 12 of the Civil Code of the Russian Federation, civil rights are protected: by recognizing the right; by restoring the status in effect before the right was violated and by suppressing actions that violate the right or create the danger of its violation; by recognizing a disputable transaction void and applying the consequences of its void; by applying the consequences of an invalid void transaction; by recognizing the meeting decision as invalid; by recognizing the act of a state authority or local self-government agency as invalid; by enforcing self-help; by enforcing judgment for specific performance of an obligation; by recovering losses; by recovering damages; by compensating for non-pecuniary damages; by terminating or altering legal relations; by the court not applying an act of a state authority or local self-government agency that contradicts the law; by other means as specified by the law.

Based on Article 4 of the Civil Code of the Russian Federation, an interested person has the right to take legal action to protect his or her violated or disputed rights or legal interests in the due order established by said code. However, when taking legal action, the HA plaintiff did not specify its rights and



legal interests that were violated or the means of rights protection it chose, and did not provide evidence to prove the violation of its rights. Since such a means of rights protection as recovery of expenses on the completion of construction and commissioning of an apartment block is not mentioned in Article 12 of the Civil Code of the Russian Federation or any other law in effect, the district court had no grounds to recover the damages declared by the HA plaintiff from the defendants [8].

The complexity of the investigated situation is that three years before the establishment of the HA, several owners of unfinished apartments, for the purpose of safekeeping and integrity of the object under construction and maintenance of minimum pace of construction, independently hired a contractor and performed a set of works in 2010-2013. When hearing the case, the district court did not provide a legal evaluation of these circumstances; ergo, it did not apply the appropriate legal regulations. Several owners of unfinished apartments, who were not part of the HA, performed and covered the cost of works required for the construction of the building, which amounted to more than 2 million rubles; in particular, performed 63 types of various construction works and expenses, which is proven by documents of the case. The construction works were done by the contractor under a construction contract, entered into by one of the owners of the apartments under construction as the client. The work was paid for in full and accepted under an Acceptance certificate; a Statement of Costs and Expenses for Completed Works was concluded. The HA plaintiff failed to provide any written evidence that would rebut the evidence of the defendants in regards to the cost and scope of construction works performed by the defendants in the apartment block located at the above address [8].

Discussion and Conclusion

According to Paragraph 1, Article 4 of the Urban Development Code of the Russian Federation, the relations in regards to the construction of major construction objects are regulated by the urban development laws [5]. According to the developer letter to the defendants dated 11.11.2013 No. 35/TO/31-G-59, the presented scope of performed construction works has been checked by the workers of the "Developer-Client". The performance of the works has been confirmed; said works were not performed, accounted or paid for by other organizations under construction agreements concluded during the construction by the "Developer-Client". The presented as-built documents have been thoroughly checked and found to comply with the current requirements of the Urban Development Code of the Russian Federation, as well as to construction standards and rules. Thus, the competent legitimate developer confirmed the correspondence of the indicated scope of works to the design documentation and proved that no money had to be paid again to the competent legitimate developer for said already performed work. Neither was it necessary to redo the work, since it was done by the defendants in accordance with the design, as it should have been done by a competent legitimate developer. The competent legitimate developer, the HA plaintiff, failed to prove that the works for the construction of the major construction object, performed by the defendants (non-members of the HA) at their own expense, had any negative effect on the safety of said major construction object; hence, according to Paragraph 2, Article 52 of the Urban Development Code of the Russian Federation, such work could be performed by any natural persons or legal entities [5]. When confirming the fact

of work performance, its specific scope and cost in the building constructed by the developer, these facts were ignored by the district court, while the HA refused to settle the expenses of the owners of unfinished apartments (non-members of the HA) on account of their additional payments for the completion of construction and commissioning of the building [8].

The court ruling favors the increase of the financial capacity of the apartment owners who united into the HA at the expense of the defendants – the owners of unfinished apartments in said building (non-members of the HA) by obliging the defendants to pay again for the works that were already done and paid for; at that, the payment amount exceeds the claim of the HA plaintiff. This stance of the court contradicts the fundamental principles of the civil law, which is based on the equality of the participants of regulated relations. The owners of unfinished apartments were discriminated against based on the membership in the HA, despite the fact that the very existence of this legal entity under these circumstances is illegal [8].

Implications and Recommendations

The owners of unfinished apartments (non-members of the HA) sustained considerable financial damages due to the court ruling, since their additional independent expenses on the further construction of the apartment block were nullified. Said owners went to the court of appeals and cassation with reasonable complaints. However, virtually all cases in the jurisdiction at hand are settled by the court of first instance – the district court.

The federal judges are skilled lawyers and are well aware of this illegitimacy of “housing regulation of major construction”. Under the pretense of dealing with long-delayed construction, courts take the administrative and economic course of charging the deceived investors with the funds for the completion of construction of an apartment block, with the presence of a competent and legitimate developer, which is, however, a federal treasury agency. As a result, the court resisted the supremacy of law; this requires the reformation of not only the legislative framework, but also the court system in general.

Disclosure statement

No potential conflict of interest was reported by the authors.

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