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SPECIAL ACCOUNT FOR CAPITAL RENOVATION

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Abstract

The relevance of the research is reasoned by the fact that significant proportion of apartment housing in Russia needs capital renovation. The collapse of housing maintenance system led to a critical wear of apartment buildings. In order to prevent property damage, the state forced the introduction of the capital renovation institution of apartment buildings. Prior to that, it was up to the residents to decide whether or not to raise funds for capital renovation. At present, these compulsory payments that form the repair fund pose a major expense for the population. In this regard, there is a growing need to find the most effective mechanism for funding capital renovation of the common property in apartment buildings by establishing additional financial sources. The article studies the current mechanism for accumulating funds on capital renovation of apartment housing in Russia since 2012. The focus of the article is the mechanism of funding capital renovation from funds stored in the special accounts of common property owners. The article provides recommendations for the improvement of the mechanism of formation and application of the special fund for capital renovation of common property in apartment buildings. *The article aims to analyse the theory and practice of developing a mechanism of funding capital renovation from accumulated funds on the special account.*

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1. Introduction

The relevance of the research is reasoned by the need to study the problem of shortage of funds for capital renovation of common property in apartment buildings, the wear of which exceeded the maximum values. In this regard, there is a growing need to find the most effective mechanism for funding capital renovation by establishing additional financial sources and increasing the amount of capital renovation contributions from population in a reasonable way. The establishment of a special account is an alternative way to accumulate funds of owners for capital renovation.

2. Problem Statement

During the research the official statistics of the formation and use of the capital repair fund of the Sverdlovsk region were used to identify patterns in the formation of tariffs for the production of capital repairs and to determine regional features.

3. Research Questions

The study of legal regulation and the practice of maintaining special accounts to pay for the overhaul of the common property of apartment buildings is aimed at identifying legislative and law-enforcement deficiencies and developing proposals to improve the provisions for ensuring repair work on time. An objective statement of the numerous facts of insufficient funds at the time of the overhaul indicates the need for: - improving information support in the field of overhaul, - increasing guarantees of the safety of collected funds; - increase measures of state support for regional capital repair programs.

4. Purpose of the Study

From an economic point of view an apartment building is a type of property with both individual and collective ownership. In this case, the owner of individual property (apartment area) receives the so called 'common' property of the apartment building as indirect impersonal possession. At the same time, subparagraph 1 (2) of Article 154 of the Housing Code of the Russian Federation (HC RF) (The Housing Code of the Russian Federation..., 2004) specifies that capital renovation of the common property in apartment building to be funded by the owner of the housing (Sorokin & Sorokina, 2017).

The legislation provides owners with two options for accumulation of funds. The first option is to transfer funds to the account of the regional operator. The second one is to transfer funds to a special account. However, there is an important condition. If residents of an apartment building neglect their right to choose between the two, then the funds to be accrued to the regional operator by default (Chikina & Dakaeva, 2016).

The owners who choose to transfer their funds to the special account bear responsibility for implementing capital renovation of the common property, assuming all the risks associated with this. This account has certain features. The account is opened under the provisions of Chapter 45 of the Civil Code of the Russian Federation (CC RF). The feature of that type of account is that the account holder may be as follows: a condominium association (CA), a housing cooperative (HC) that owns the building, a

management organisation (MO) or a regional operator. Thus, it is up to the owners of the premises to choose the account holder. In addition, the owners of premises should meet in order to determine the order and conditions of issuing payment documents, choose the subject to provide owners with payment documents, including using State Information System (SIS) of the Housing and Utilities Infrastructure (HUI), and choose a bank. These compulsory conditions are specified in part 4 of Article 170, part 3.1 of Article 175 of HC RF. The condition on increasing the amount of a contribution beyond the minimum amount, established by constituent entities of the Russian Federation, is accepted by the majority in two thirds voices from total number of voices of owners.

The primary advantage of the special account mechanism is that it enables owners to control application of accumulated funds for renovation of a particular building (instead of common pool principle), to initiate pre-term capital renovation of common property, to choose the contractor for capital renovation, to control the execution of works, to choose a lending institution (a bank) for placing capital renovation funds, to place idle funds on saving deposit, protecting accumulated funds from depreciation, and to receive a loan (Karakuleva, 2016).

However, the shortage of special account funds to carry out repairs occurs often. One of the examples of this is capital renovation of the apartment building in Moscow initiated by its owners. To execute the decision of the meeting, Panorama CA entered into an agreement with Elkoyent LLC on executing corresponding works. However, due to the shortage of special account funds the association was unable to pay for the rendered services. Then Panorama CA used the contingency fund executing the decision of the owners. The special account balance restored over the time. Then Panorama CA submitted a payment order to transfer funds from the special account to its checking account to recover previously paid amount as a third payment for the services rendered under the agreement. The bank refused to fulfil the payment order, so Panorama filed a claim, which was subsequently satisfied (The decision of the Moscow Arbitration Court, 2020).

Only the person specified in the decision of the general meeting of owners, the so-called authorised person, has the right to conduct account-related transactions – part 23 of Article 175 of HC RF. Therefore, the special account can be attributed to the nominal account. It means that the account holder and the person who is authorised to conduct account-related transactions are different subjects. The person who manages the account is obliged to provide the account holder with information on the amount of funds accrued as contributions for capital renovation. Another feature of this mechanism is that the account funds to be applied solely for the purposes provided for in Article 174 of HC RF, as in the case of regional operator account. The foreclosure on funds under owner obligations may not be imposed, except for the contractual obligations related to rendering services or execution of works on capital renovation. If the owner is declared bankrupt, the account funds shall not be included in bankrupt assets for repayments towards creditors. If the account holder is liquidated, reorganised or for any other reasons ceases to be the manager of an apartment building, then by virtue of part 8 of Article 175 of HC RF, owners of premises are obliged to arrange a general meeting to appoint a new holder or choose other way for accumulating funds. Each owner of a premise in the apartment building and a body of state housing supervision can receive any information about special account at any time. The holder, in turn, must provide this information.

A lending institution may not refuse to open a special account. However, not all lending institutions may open such account. The institution must comply with the requirements established by the Government of the Russian Federation of May 23, 2016 (On approval of the rules for placing idle funds of..., 2016). Resolution N 497 of April 24 (On establishing requirements for Russian lending institutions, 2018) established the account-related requirements for Russian lending institutions (Berg, 2018).

The Central Bank of Russia publishes a list of lending institutions on its official website every quarter. As of July 1, 2019, the lending institutions that comply with the requirements are as follows: GPB (AO), VTB Bank (PAO), Alfa Bank (AO), Sberbank (PAO), Bank Otkritie Financial Corporation (PAO), Rosselkhozbank (AO), and two other banks – Rossiya Bank (AO), Russian National Commercial Bank (PAO), operating in the Republic of Crimea and Sevastopol (The Regional Fund for support in ..., 2020).

A lending institution, within the special account framework, may also serve as a source of funding capital renovations. The bank where the owners decide to borrow funds may be different from the bank where the special account is opened. The borrower will be the special account holder. The rights and obligations under the loan agreement to be transferred to a new holder if the previous holder is changed. The minimum contribution and the collection rate will determine the amount of loan. Attracted funds to be transferred to the special account and applied as intended. The source of repayment of the loan is the subsequent contributions of the owners.

The Article 177 of HC RF stipulates the list of transactions available for the special account. The transactions are as follows: writing-off funds in relation to capital renovation execution; settling loan transactions received on capital renovation; transferring funds from one account to another in case of its change; transferring funds to the account of a regional operator in case owners of the building change formation of capital renovation fund; charge overdue interest for late contributions; and other transactions. Thus, the list of account-related transaction remains open.

Article 175.1 of HC RF entitles both regional operator and a special account holder to place a deposit on the special account to increase the resources of the fund. A meeting of owners decides on opening of the deposit account and documents the decision in the minutes. The minutes are then to be submitted to the bank and the special deposit is to be opened for a certain amount and term. The owners decide on the amount and terms themselves as restrictions are not specified. The bank accrues interest for the deposit that forms income. The parties to the agreement are the account holder and the lending institution. Chapter 44 of CC stipulates the terms of this agreement. Deposit funds shall be idle and applied only for the purposes specified in Article 174 of CC RF. Part 1 of Article 175.1 of CC RF stipulates the requirements for banks on deposit opening as in case of the special account.

Owners may receive certain easing, if they form the fund in the special account. Part 8 of Article 170 of HC RF implies that accumulation of funds shall cease as soon as the accumulated funds equal the minimum level of capital renovation fund. Regional authorities, depending upon the situation in each constituent entity of the Russian Federation, set the minimum level of the fund. The owners decide on ceasing accumulation of funds at general meeting. Debtors, in turn, shall not be free from the obligation to pay contributions.

«According to the part 7 of Article 189 of HC RF, the local governing body interferes if owners, who make a decision on opening the special account for capital renovation of an apartment building, fail to conduct capital renovation in the terms provided by the regional programme» (par. 5, p. 56).

Look at the indicators on collectability of contributions for capital renovation in Sverdlovsk region and Yekaterinburg City Municipal Entity for the last few years.

Table 01. Collectability of contributions for capital renovation in Sverdlovsk region and ‘Yekaterinburg City’ Municipal Entity’ (The foundation reports...)

Date	Contribution collection area	Number of apartment buildings that formed capital renovation fund in the regional operator account	Number of apartment buildings that opened the special account (a regional operator is the account holder)	Number of apartment buildings that opened the special account (CA, HC, MO are the account holders)	Collection plan (million roubles)	Actual contributions collected (million roubles)	Arrears of contribution (million roubles)	The level of collectability (%)
01.01. 2017	Sverdlovsk region	25.864	955	1.347	12.730.57	10.696.59	2.033.98	84.0
	Yekaterinburg City Municipal Entity	5.805	462	846	4.520.23	3.814.48	705.81	84.4
01.01. 2018	Sverdlovsk region	24.360	1.106	2.133	18.585.73	15.967.5	2.618.23	85.9
	Yekaterinburg City Municipal Entity	5.336	515	1.158	6.402.85	5.423.38	974.47	84.8
01.01. 2019	Sverdlovsk region	2.4011	1.129	2.471	24.779.01	21.974.77	2.804.26	88.68
	Yekaterinburg City Municipal Entity	5.225	528	1.282	8.500.49	7.470.98	1.029.52	87.89
01.01. 2020	Sverdlovsk region	23.679	1.181	2.758	31.204.60	28.170.16	3.134.43	90.28
	Yekaterinburg City Municipal Entity	5.148	559	1.504	10.674.65	9.568.56	1.079.10	89.87

As the Table 01 shows:

- 1) the number of apartment buildings in Sverdlovsk region and the regional centre that choose to accumulate funds on the special accounts is growing from year to year;
- 2) the level of collectability reached 90.28 % in Sverdlovsk region and 89.87 % in the regional centre by 2020. It is worth mentioning, that the amount of the minimum contribution for capital renovation is growing constantly. Since January 1, 2020, the amount of the minimum contribution in the Sverdlovsk region amounted to 9.72 roubles per square metre (On setting the minimum contribution to fund for capital renovation ..., 2019).

Despite the growing amount of a contribution for capital renovation, level of collectability is sufficiently high. That shows that the majority of population understands the need and inevitability of funding capital renovation. On top of that it is explained by the increasing public awareness of order and terms for capital renovation of common property in apartment buildings (the relevant information on a building is publicly available at SIS HUI).

At the same time, the special account has its risks related to the lack of an effective way of protecting funds in case of bankruptcy of a lending institution.

Galina Khovanskaya, Head of Duma Committee on HUI, considers that the operating mechanism of protecting funds for capital renovation does not work properly, and the funds shall be insured as private deposits. «In case of bankruptcy of the housing cooperative, the bank as a creditor of the third stage can hardly count on return of» funds (How to prevent loss of funds for, par. 3, 2020).

5. Research Methods

The research methods of the article are the principles of legal science: systematic research, objectivity and concreteness, which made it possible to see the processes under study in their real development and relationships, to conduct a comprehensive analysis and assessment of the specific facts. The comparative analysis, critical analysis, statistical analysis methods are used during research.

6. Findings

The following should be attributed to the problems of fund formation in the special account:

1. Impairment of the funds received by the capital renovation fund. If a regional operator forms the capital renovation fund, no interest is accrued. Thus, capital renovation of good-shaped buildings will be executed in the distant future by decision of the competent authorities of constituent entities of the Russian Federation and municipal entities. Therefore, the accumulated fund will be depreciated. When the capital renovation fund is placed in a special bank account, the funds are also depreciated, as there is no guarantee that the interest rates of such accounts will be higher than the inflation rate in the future. The large banks, as a rule, do not offer high interest rates. Sometimes they are even lower than the inflation rate. In addition, housing legislation severely narrows down the range of banks for capital renovation fund. This reduces competition between banks and lowers the interest rate below acceptable level.

2. Weak security of the capital renovation fund. This may include the following issues: recognition of a lending institution of a special account, which does not comply with the requirements of Article 176 of HC RF; withdrawal of the license of a lending institution;

3. Complex procedure for decision making on fund formation in a special account and opening an account (unfortunately, for many citizens this procedure is not clear).

4. Lack of statutorization of the method of formation of funds for capital renovation within the CC RF. The issues of bank account agreement refer to the civil legislation, which is the subject of exclusive jurisdiction of the Russian Federation. Therefore, it is reasonable to introduce corresponding norms into part 2 of the CC RF.

In connection with the above, it is necessary:

- to legally enforce lower interest rates on loans and borrowed funds for capital renovation. In addition, public funding of emergency renovation can be provided on a solidarity basis;
- to extend the norms of the Federal Law ‘On insurance of deposits in banks of the Russian Federation’ (On insurance of deposits in banks ..., 2003) to capital renovation funds accumulated in the special accounts. In other words, return to the adoption of the relevant draft law, which was rejected by the Government in October 2019 (The Cabinet of Ministers did ..., 2020);
- to differentiate the capital renovation contributions by the type of building and its condition. The uniform amount of contribution for all buildings of a constituent entity, absence of increasing coefficients for apartment buildings with the close-to-emergency condition, destabilise capital renovation system;
- to activate regional and local level training on legal and methodological support to housing owners in organising and executing capital renovation (in form of workshops, meetings with representatives of housing owners, CA, HC, a housing construction co-operative at public control centres, reception of Duma members of different levels).

7. Conclusion

It is impossible to ensure timely and quality capital renovation without imperatively established provisions on creation and regulation of regional operator's activity, the procedure of contractor selection, the control over contractor's compliance with deadlines and compliance of quality capital renovation with established requirements and conditions of the corresponding agreement.

However, the major weakness in the system of organisation and execution of capital renovation of apartment buildings is insufficiency of corresponding contributions. The renovation of the common property in the apartment building requires serious financial investments. The overwhelming number of apartment building cannot implement capital renovation on their own, so the support of public authorities at all levels is required, taking into account that the right to housing and the right to a favourable environment are constitutional rights of citizens.

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