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Features of Encumbrances Related to Construction in the Russian Federation (Quarterly Development of Residential Complexes)

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ABSTRACT

The author considers the encumbrances imposed on the developer in favor of the state, which are reflected in the Urban planning code of the Russian Federation. The developer needs to build an appropriate number of social facilities (schools, kindergartens), as well as provide Parking spaces, house driveways, depending on the area of the housing being built and sold. there is a shortage of social infrastructure facilities necessary to ensure the minimum standard of living of the population. During the construction of an array of residential complexes, the population of a particular area increases, which means that the load on the existing objects of transport, engineering and social infrastructure (clinics, schools, kindergartens, consumer services and trade, culture, sports, leisure, etc.) increases. But the expenses for the construction of such facilities are often not planned in the state or municipal budgets.

KEYWORDS: *Encumbrances in favor of the state, social infrastructure facilities, responsibilities of the developer, provision of Parking spaces, house driveways.*

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1. INTRODUCTION

The fact that the construction site may be charged with any additional costs for the benefit of the court, it is directly stated in the City Planning Code (Articles 46.2, 46.6 of the City Planning Code of the Russian Federation (hereinafter referred to as the Civil Code of the Russian Federation). , it is provided that the organs of state power can conclude a contract with development on the development of a built-up territory. Within the framework of this agreement, the organization can be We have obligations to build a communal, transport, social information structure and support Following the transfer of these objects to the state. The body of state power is in place of the obligation. to provide a land plot for construction (free of charge for property or for rent (the amount of payment must be equal to the land tax)), as well as to take certain organizational decisions the necessary for the process with trials (p. 2.1 Art. 30 of the Land Code of the Russian Federation (hereinafter referred to as the RF LC); sub. 1 p. 3 art. 46.2 GrK).

It should be noted that the obligation of the developer is indirectly indicated in article 18.1 214-FZ "On participation in the shared construction of apartment buildings and other real estate objects" - an agreement on the distribution of costs for the construction of these social infrastructure objects (paragraphs of this article 1.3 directly speak of gratuitous transfer into state or municipal ownership). This encumbrance does not apply to specialized developers, in the case of concluding agreements with equity participation, according to which the funds of the equity holders are deposited into escrow accounts as payment.

2. Literature Review

What is the source of the burden to build social infrastructure facilities? Territorial (quarterly) development imposes certain requirements on the developer, for example, when building a certain number of square meters of housing, the developer must build an appropriate number of social facilities (schools, kindergartens, etc.), as well as provide parking spaces, adjoining driveways.

Article 11 of the Urban Planning Code of the Russian Federation prescribes the development at the stages of territorial planning schemes (hereinafter referred to as the STP) of Russia, the constituent entities of the Russian Federation, and based on the STP of districts - documents of the next level of detail: master plans of urban or rural settlements, land use and development rules, detailed planning projects for specific areas of new construction or reconstruction of residential and industrial facilities. This is an important circumstance for understanding that STP cannot answer all questions at once. The legislation provides

for their gradual solution as the scope of the territory is enlarged.

The territorial planning scheme (STP) is, on the one hand, a necessary stage in documenting the process of economic development of the territory, on the other hand, it is a tool for determining possible directions of development.

The need to develop a STP is dictated by the Urban Planning Code of the Russian Federation. This is a mandatory type of documentation, which must be at the disposal of the administrations of municipalities in order to be able to resolve issues of land and property relations and to permit new construction and reconstruction of objects of various functional purposes on their territory.

It should be taken into account that the STP is a necessary, but not sufficient condition for solving these issues. The territorial planning scheme itself is a tool for work. The effectiveness of its further use depends on whose hands it falls into and what it will be used for. In our country, many plans and programs that have remained "on paper" have been prepared and adopted, because they were either poorly developed, or their responsible executors could not fulfill their responsibilities.

If we talk about the poor-quality development of program documents, this means that it was not clear:

- what are their true goals and whether they are correctly stated;
- where to start their implementation;
- how to reconcile the interests of their performers;
- how their implementation should be monitored;
- at what pace it is necessary to carry out the planned activities;
- what is the responsibility of the performers and to whom they are obliged to report, etc.

Thus, the quality of program documents is closely linked to activities aimed at their implementation. This is the main implication of territorial planning documents. The quality of the scheme depends on how correctly the developers estimated the activity potential of the territory, that is, the true ability to develop people and territory.

Municipalities, even if they are in the same area, have a lot of differences. It is important to understand that they cannot be equalized. For each of them, you need to create your own urban planning documentation, taking into account the capabilities of specific territories and the abilities of the people who live on them.

The need (or lack of need) for the creation of social facilities (schools, kindergartens, etc.) can be substantiated by referring to local (regional) urban planning standards. For example, in St. Petersburg the Law of February 14, 2014 No. 23-9 "On regional standards of urban planning applied in St. Petersburg" was adopted. Article 7 of this Law provides that the provision of the population of St. Petersburg with educational institutions for a period up to 2025 is calculated based on the standard for 1000 residents by general educational organizations, with the exception of specialized ones, - 120 places with a service radius of 500 m.

St. Petersburg has long remained loyal to developers. Considering that each region adjusted the standards on its own, experts say that in St. Petersburg, until recently, they were one of the most loyal for developers. For example, in some places the current standard in Moscow even exceeds the new St. Petersburg one. Expert G. Altukhov says [3] that depending on the district, the number of places in kindergartens per thousand inhabitants in the capital varies from 52 to 70 (minimum - in the Central Administrative District, maximum - in areas of new mass development, for example, in New Moscow) , and in schools - 120 places.

More stringent, in comparison with the previous St. Petersburg, standards have been established for the Leningrad region: 60 places in kindergartens in urban settlements and 40 in rural areas. True, the "school" standard is still lower - 91st and 61st places, respectively. In the Moscow region, on the contrary, the number of schoolchildren per thousand inhabitants is expected to be significantly higher (135), and children in preschool educational institutions - slightly less (40). In general, everything has long been going to the point that the standards for St. Petersburg should be revised. *Table 1*

Number of places in kindergartens and schools per 1000 inhabitants *

Region / norms	Old norms (kindergartens)	New norms (kindergartens)	Old norms (schools)	New norms (schools)
St. Petersburg	35	55	115	120
Leningrad region	33-40 (villages) 51-60 (cities)	60	61 (villages) 91 (cities)	91
Moscow		55-70		120

*new standards for St. Petersburg and Leningrad Region have been in effect since 2014.

The standard for St. Petersburg was increased by 60% for kindergartens and by 5% for schools. It is also important that the new urban planning regulations assume a very high specific area of green spaces - 16 sq. M. per person. For comparison: in the Leningrad region this value is 5 square meters, in Moscow - 6.5 square meters.

Let's consider the situation with adjoining driveways (intra-quarter roads), objects of other social infrastructure.

The obligation of a housing developer to create a social infrastructure depends on whose land plot is being built (private or public), on the terms of contracts concluded with public authorities (investment, development of the territory, etc.).

For example, in some cases, the law directly provides for the possibility of imposing obligations for the construction of social infrastructure on the developer. For example, an agreement on the development of built-up areas may include a condition on the company's obligation to carry out the construction and (or) reconstruction of engineering, social and utility infrastructure facilities to provide a built-up area (clauses 1, 2, part 4 of article 46.2 of the Civil Code of the Russian Federation) ...

The contract may contain conditions for the transfer of these objects upon completion of construction to municipal ownership for a fee or free of charge.

However, much more often than an agreement on the development of a built-up territory, development include with the state authorities (for example, with the administration of the city) so called an investment agreement not provided directly by the Civil Code (hereinafter referred to as Civil Code of the Russian Federation).

In fact, this is an agreement on joint activities (Article 1041 of the Civil Code of the Russian Federation).

It states that the administration is obliged to provide the construction site with permission to build The property, as well as the land plot, and the builder, in return, transfers the administration of a part of the apartments to the building a house or part of the area in an object of non-residential real estate, sometimes an engineering network or objects of a social ¬Ny infrastructures ¬structures (kindergarten, house of culture, etc.).

In modern conditions, the rates of commercial and housing construction are significantly higher than the forecast, laid down in the documents of territorial planning. For this reason, there is a shortage of social infrastructure facilities necessary to ensure the minimum standard of living of the population. During the construction of an array of residential complexes, the population of a particular area increases, which means that the load on the existing objects of transport, engineering and social infrastructure (clinics, schools, kindergartens, consumer services and trade, culture, sports, leisure, etc.) increases. But the expenses for the construction of such facilities are often not planned in the state or municipal budgets. Therefore, in practice, it is often the responsibility of the construction business, both developers and investors, to resolve this issue. However, the question of how such obligations of the developer should be formalized has not yet been unequivocally resolved. More precisely, it is regulated only in individual cases.

So, the special state program "Provision of affordable and comfortable housing" (approved by the order of the Government of the Russian Federation of 12/30/17 No. 1710) stipulates that ready-made social facilities created at the expense of developers are transferred to the municipal entity free of charge or leased to it until full or partial reimbursement of the developer's costs. In other cases, the authorities themselves have to invent mechanisms for imposing obligations on the developer to build social infrastructure facilities.

Construction on state or municipal land plots. If construction is planned on a public land plot, the following options are possible for imposing obligations on the developer for the construction of social facilities. The engineering infrastructure is usually understood as a communication system of water supply, sewerage, heat, electricity and gas supply facilities, communications (electrical and other networks, boiler houses, pumping stations, treatment facilities, etc.).

Development of built-up areas. In some cases, the law directly provides for the possibility of imposing obligations for the construction of social infrastructure on the developer.

For example, an agreement on the development of built-up areas may include a condition on the company's obligation to carry out the construction and (or) reconstruction of engineering, social and utility infrastructure facilities to provide a built-up area (clauses 1, 2, part 4 of article 46.2 of the Civil Code of the Russian Federation)...

The contract may contain conditions for the transfer of these objects upon completion of construction to municipal ownership for a fee or free of charge.

Complex development of the site for housing construction. A municipal or state authority may provide land plots to developers for integrated development for housing purposes. Comprehensive development includes the preparation of documentation for the planning of the territory, the implementation of work on the arrangement of the territory through the construction of engineering infrastructure, housing and other construction in accordance with the types of permitted use (clause 1 of article 30.2 of the RF LC). The wording that the developer's work may include not only housing, but also other construction, on the one hand, makes it possible to provide in the contract a condition on imposing the obligation on the developer to build social infrastructure facilities. On the other hand, within the framework of a lease agreement for integrated development, the law directly speaks only of the obligation to equip the territory in the form of work on the construction of engineering (and not social) infrastructure facilities, which the developer then transfers to municipal ownership on contractual terms: for a fee or gratuitously. It is unacceptable to include in the contract other requirements for the performance of any work or the provision of services that entail additional costs for the winner of the auction (clause 4 of article 38.2 of the RF LC). Thus, a lease agreement for a land plot for integrated development may provide for the developer's obligation to build social infrastructure facilities. But the condition on the obligation to transfer such objects to state or municipal ownership free of charge or for compensation can be considered as contrary to paragraph 4 of Article 38.2. Land Code.

Therefore, the company is most likely entitled to challenge such a condition of the contract as contrary to the law. True, there are no similar cases in judicial practice yet - perhaps the reason is that there are not so many territories for the integrated development of land plots.

Investment agreements (contracts). During construction on state (municipal) sites, the practice of concluding investment contracts is still widespread. The subject of such a contract may be the implementation of an investment project, which includes investment and the production of construction and preparatory work, for example, for the demolition of existing buildings and structures and the construction of residential buildings with social infrastructure facilities, as well as engineering infrastructure. The result of investment activities is distributed among the participants in the investment contract in accordance with the terms of this contract.

Sometimes, in contracts, the company's obligation to create social infrastructure facilities looks different. The company is not obliged to independently build these facilities, but the contract includes a condition on its financial participation in the development of the city's social, transport and engineering infrastructure. The courts recognize this practice as consistent with the current legislation: by virtue of the principle of freedom of contracts (Article 421 of the Civil Code of the Russian Federation), the parties are free to assume any obligations not prohibited by law (decisions of the Presidium of the Supreme Arbitration Court of the

Russian Federation (hereinafter referred to as the Supreme Arbitration Court of the Russian Federation) dated 05.02 .13 No. 12444/12, dated 11.10.11 No. 5495/1). The problem here lies in the following: usually a company interested in the implementation of its construction project is simply forced to agree to finance the infrastructure, because otherwise they will not conclude an investment contract with it and issue the necessary permits. At the same time, the company does not have the right to unilaterally refuse to fulfill its voluntarily assumed obligation to transfer funds for the creation of infrastructure (Articles 309, 310 of the Civil Code of the Russian Federation). But the company is not entitled to demand from the authorities to issue the necessary permits on the grounds that it transferred money to finance the infrastructure: the public-law (power-administrative) powers of state bodies are not reciprocal civil legal obligations in relation to the company's obligations in terms of financing the creation of infrastructure. It is possible to compel the execution of public law powers only by challenging actions, inaction, illegal decisions (Resolution of the Presidium of the Supreme Arbitration Court of the Russian Federation dated (05.02.13 No. 12444/12, dated 03.04.12 No. 17043/11). Therefore, it should be borne in mind that if a company has signed such an agreement, it will most likely not work to challenge the provisions on the obligation to build or finance the construction of social infrastructure facilities.

The issues of participation of developers in providing territories with social and transport infrastructure facilities are currently not regulated by law. The very possibility of including in the contract with the developer of obligations for the construction of social facilities is directly provided only in relation to the development of already built-up territories (subparagraph 1 of paragraph 4 of article 46.2 of the Civil Code of the Russian Federation) and indirectly - to the lease of land plots for integrated development for housing construction (Subclause 8, clause 3, clause 4, Article 38.2 of the RF LC). But these models are rarely used in practice: the first is due to the lack of free plots, the second is due to the lack of land use and development rules, as well as due to special requirements for the territory in relation to which such an agreement can be concluded (paragraph 3 of Art. 46.1 of the Civil Code of the Russian Federation). Nevertheless, the vast majority of municipalities condition the provision of land plots for construction by the developer's commitment to the development of social and road transport infrastructure.

What kind of agreements are used to formalize such agreements? Most often, agreements on the participation of a developer in socio-economic development, as well as investment agreements, etc. Moreover, earlier, contracts under which a part of the constructed objects were supposed to be transferred to a public entity were often qualified by the courts as agreements on joint activities.

Construction on your own land. The owner of the land plot has the right to erect residential, industrial, cultural and domestic and other buildings, structures, structures in accordance with the intended purpose of the land plot and its permitted use in compliance with the requirements of town planning regulations, construction, environmental, sanitary and hygienic, fire safety and other rules, standards (sub. 2, clause 1, article 40 of the RF LC).

But there are a number of restrictions, in the presence of which residential development, even on its own site, is limited. For example, in the municipal budget, the provision of the territory of the planned development with social infrastructure is not planned or delayed for a period unacceptable for the developer. This means that after the commissioning of new residential complexes, the load on the already existing social infrastructure will increase. The law does not oblige private owners of land plots to ensure the creation of objects of social importance on the territory of residential development, which is located on this site. Therefore, on a legal basis, it is impossible to oblige a developer who plans to build or reconstruct on his own site to build social infrastructure facilities. But state and municipal authorities often use various measures of influence to force the developer to take on such an obligation (otherwise the developer will not be able to obtain the approvals necessary for the construction).

Moreover, this is often done on externally legitimate grounds, since the relevant norms are contained in regional legislation. But in most cases, the developer can successfully challenge such actions (inaction).

Refusal to issue an urban planning plan. To start construction on its own site, the company needs to issue a number of key documents, in particular a building permit. It confirms the compliance of the project documentation with the requirements of the urban planning plan of the land plot (part 1 of article 51 of the Civil Code of the Russian Federation). But in order to obtain a building permit, a company must submit, along with an application, another document - an urban planning plan (clause 2, part 7, article 51 of the Civil Code of the Russian Federation). At the request of an individual or legal entity, a local government body is obliged to prepare an urban planning plan for a land plot within 30 days, approve it and issue it to the applicant (part 17 of article 46 of the Civil Code of the Russian Federation). If a plot for construction is provided under an agreement on the development of a built-up area, then the developer can cover his costs from funds received from equity holders.

But he is not entitled to direct these funds for the construction or reconstruction of social infrastructure facilities (clause 6 of part 1 of article 18 of the Federal Law of December 30, 2004 No. 214-FZ).

Possible obstacles in obtaining a town planning plan. Often, municipal authorities create obstacles in the issuance of an urban planning plan, if the developer does not plan to build social infrastructure facilities simultaneously with the construction of a residential facility. For example, the developer is confronted with the fact that he will receive a town planning plan only if he independently develops the documentation for the planning of the territory and, when building, takes into account the requirements approved in it. The fact is that it is the territorial planning project that contains the calculation of the needs of a particular territory in the social infrastructure (part 1 of article 42 of the Civil Code of the Russian Federation). Until it is developed and approved, the authorities have no reason to refuse the developer to build due to the lack of social infrastructure. The authorities are guided by the following logic. If, having received a refusal to issue an urban planning plan, the developer changes his mind about building up his site, thereby in the corresponding area there will be no risk of an

increase in the load on already existing social infrastructure facilities. If the developer agrees to develop documentation for the planning of the territory, and the state body approves it in the prescribed manner, then one of two situations may develop.

First, the developer concludes an agreement with the state body, according to which, along with its facilities, it erects social infrastructure facilities at its own expense and transfers them to the State agency on agreed terms.

The second is that the developer starts construction of only his own facilities, but freezes this project before the authorities create the planned infrastructure facilities at the expense of budget funds, which again eliminates the burden on already existing facilities. In some constituent entities, at the level of regional or local legislation, it is explicitly stated that the preparation and issuance of a town planning plan for a land plot is carried out only if such a plot is part of the territory in respect of which the planning project and the land survey project have been approved.

In this regard, if there is no such documentation for the territory of the planned development, and the developer refuses to independently develop and submit it for approval, the developers are denied the issue of the urban planning plan. Challenging the actions (inaction) of the authorities. These requirements, possibly fair in essence (in any case, useful for future residents of the built-up areas), are not legal and formally do not correspond to the provisions of the Urban Planning Code.

Firstly, the urban planning plan of the site itself does not contain information on the calculations of the provision of a facility under construction or reconstruction with social infrastructure included in the territory planning project (part 10 of article 45 of the Civil Code of the Russian Federation). It contains only information from a higher-level document - land use and development rules.

Secondly, the Urban Planning Code does not provide for such a reason for refusing to issue an urban planning plan for a site, as the absence of approved planning and land surveying projects. Moreover, the Town Planning Code does not at all provide for the possibility of refusing to issue town planning plans, which means that the grounds for non-fulfillment of their obligation to issue this plan cannot be established by a regulatory act of the local government: this will lead to an unreasonable restriction of the rights provided for by federal legislation.

Additional approvals before issuing a town planning plan. In some regions, it is common practice to introduce requirements for the approval of certain decisions related to the placement of a specific object on a land plot, even before the issuance of an urban planning plan.

It is often at this stage that state or municipal authorities try to suspend the approval of construction of facilities that will not be provided with a certain infrastructure. However, the courts indicate that it is unlawful to require additional approvals, obtain additional documents or amend the submitted documents in order to issue urban planning plans. So, at the stage of issuing a town planning plan, a state body (or a local self-government body) is not entitled to assess the applicant's intentions for the construction of a real estate object, to check the compliance of the design solutions developed by the applicant with the requirements of mandatory rules. In addition, the urban planning plan is for informational purposes only for the purpose of determining the possibilities and requirements for the possible development of the site or reconstruction of the real estate objects located on the site, and its issuance does not prejudge the possibility of obtaining a building permit. The courts recognize the refusal to issue an urban planning plan as legitimate only in two main cases: if the applicant did not submit the necessary documents (or they do not meet regulatory requirements), and also if the site is not subject to development at all. In the first situation, we are talking about documents that contain information to be included in the urban planning plan in accordance with Part 3 of Article 44 of the Town Planning Code (for example, technical conditions for a site). Without them, it is impossible to fill in and draw up an urban planning plan. But, as noted above, information on the provision of the territory with social infrastructure facilities is not indicated in the urban planning plan of the land plot, therefore it is illegal to require such documents. In the second situation, it is meant that construction is generally prohibited on the site: for example, it is located outside the red lines, on common land.

The creation of social facilities during the integrated development of the territory is essentially not regulated either. How often is the obligation of developers to create social facilities included in lease agreements for the integrated development of territories? The issues of participation of developers in providing territories with social and transport infrastructure facilities are currently not regulated by law. The very possibility of including in the contract with the developer of obligations for the construction of social facilities is directly provided only in relation to the development of already built-up territories (subparagraph 1 of paragraph 4 of article 46.2 of the Civil Code of the Russian Federation) and indirectly - to the lease of land plots for integrated development for housing construction (Subclause 8, clause 3, clause 4, Article 38.2 of the RF LC). But these models are rarely used in practice: the first is due to the lack of free plots, the second is due to the lack of land use and development rules, as well as due to special requirements for the territory in relation to which such an agreement can be concluded (paragraph 3 of Art. 46.1 of the Civil Code of the Russian Federation). Nevertheless, the vast majority of municipalities condition the provision of land plots for construction by the developer's commitment to the development of social and road transport infrastructure. What kind of agreements are used to formalize such agreements? Most often, agreements on the participation of a developer in socio-economic development, as well as investment agreements, etc. Moreover, earlier, contracts under which a part of the constructed objects were supposed to be transferred to a public entity were often qualified by the courts as agreements on joint activities.

Now practice is following the path of qualifying such agreements as agreements not named in the Civil Code of the Russian Federation. Despite the absence of direct legislative regulation of the construction or financing by developers of such objects, the courts consider that such agreements do not contradict the legislation and should be executed by the company taking into account the general principles of fulfilling obligations.

Considering the above, we note that the authorities of St. Petersburg have adopted the experience of the Leningrad Region, where a project to simplify the tax burden has been

launched, due to which developers partially compensate for infrastructure costs. As a result, buyers receive a high-quality and comfortable living environment, and developers are relieved of the problems of managing the non-core business of private educational institutions. In addition, the developer's expenses for creating social infrastructure will decrease.

3. Conclusion

So, in St. Petersburg in 2020, a draft government decree was presented, setting standards for the purchase price of kindergartens and schools.

The practice of rationing the cost of acquired social infrastructure facilities appeared in 2019, when the city of St. Petersburg acquired 45 social infrastructure facilities.

In 2020, the practice of setting standards for the buyout of kindergartens and schools continued. The price of the facility depends on the capacity of the facilities and the availability of sports infrastructure.

So, for schools, the buyout price standard is set for 11 types of objects from 450 places to 1650 places. For example, the cost of creating one place in a typical school for 825 students in 2020 will be 1.32 million rubles.

In relation to preschool educational facilities, the price standard is set for 19 types of preschool educational facilities. The cost of creating one place in a typical kindergarten for 220 children this year will amount to 1.57 million rubles.

Changes in the construction industry caused by the transition of construction companies to work on escrow accounts made it impossible to use developers' own funds in the construction of social infrastructure facilities. To solve the problem, a project financing mechanism has been developed, which will allow banks to finance the construction of social facilities by developers under the guarantees of the city.

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