Some aspects of the provision of land in the implementation of housing in order to fulfill the agreement on integrated development of the territory

O B Borodina, A A Rasskazova and S G Kuznecova
Department of Land Use and Cadastre, State University of Land Use Planning, 15, Kazakova str., Moscow, 105064, Russia
E-mail: info@guz.ru

Abstract. The article assesses some of the problems that arise in the practical application of the norms of civil, land and other Russian legislation when concluding and fulfilling an agreement on the integrated development of territories for housing construction. The authors pay special attention to the issue of the content ratio of such concepts as type of permitted use of a land plot and integrated development of the territory. There is a need to introduce such permitted type of land use as integrated development of territories for the period of construction. The authors draw attention to the totality of obligations under the agreement on the integrated development of the participants’ territory and note that their violation by state authorities and local authorities can lead to improper fulfillment of obligations by the developer, which will lead to termination of land lease agreement and additional costs for land lease. The authors propose developing a mechanism to protect the interests of the developer when concluding an agreement on leasing a land plot, in order to implement an agreement on the integrated development of the territory.

1. Introduction
For the effective management of land resources within the boundaries of settlements, the mass development mechanism for housing construction within the framework of integrated development of territories is currently actively used. Forms of legal regulation of integrated development of territories are documented in national legislation in 2004.

In the early stages of formation, it was carried out only for housing purposes. Currently, the implementation of integrated urban development projects (hereinafter - IUD) is actively carried out in many regions of the Russian Federation, since in the context of a lack of budgetary funding, the developer is charged with the construction of infrastructure facilities, the formation of land plots and the development of planning documents for the territory [1].

The practical implementation of the new institute leads in most cases to many difficulties in view of the presence of violent legislative activity in this area with a weak economic and organizational mechanism for the implementation of the developed legal norms.
2. Results and discussion

According to the current version of Art. 46.4 of the Urban Planning Code of the Russian Federation, the integrated development of the territory includes: preparation of documentation for the planning of the territory, the formation of land within the boundaries of this territory, the construction within the boundaries of this territory of objects of transport, communal and social infrastructures, as well as other objects in accordance with the planning documentation territory [2].

Among the questions that arise during practise, it is necessary to pay attention to the details of the specification type of permitted land use in the auction documentation prepared for auctions to conclude a lease agreement for the purpose of integrated territories development.

The Land Code of the Russian Federation does not disclose the concept of the permitted type use. The theoretical approaches for determining the essence of this concept are diverse. For example, O.I. Krassov defines the permitted use of a land plot as setting a specific purpose (goals) for using a land plot and determining the scope of rights and obligations of the person who owns the land plot (real estate on it) based on certain procedures (for example, zoning of territories) or actions of state bodies authorities, local governments [3]. L.E. Bandorin defines it as an integral element of the legal regime of a land plot, the establishment of which is aimed at determining a specific, sustainable way of using land that corresponds to the intended purpose of the land from which the land plot is formed” [4].

At the same time, this is a broader concept that can be defined as a way of developing a territory which stems from the previous definition of integrated development of territories. Integrated development of the territory is not limited only to the type of permitted use, since it can become the basis for the existence of various territorial zones with different types of use.

In law enforcement practice, the qualifications of integrated development of territories and the type of permitted use of a land plot are similar.

Such situations arise, in particular, in the preparation of cadastral plans. When organizing an auction to sell the right to conclude a lease of a land plot for the integrated development of territories for housing purposes, local authorities publish documents on the Internet that indicate in the cadastral plans in the column “permitted use” - “for integrated development of territories for housing construction.”

Such legal qualification is considered controversial despite the fact that for a long time there were no documents directly related to the problem. In this case, the various concepts are combined, and the final type of authorized use as a result of the implementation of the integrated development agreement remains unknown.

Until the end of 2014, determining the types of permitted land use was an issue that was decided by local authorities at their discretion. For example, methodological guidelines on the state cadastral valuation of land in settlements have been approved, which can be used as a guide. It follows from the content of this normative act that it does not indicate such type of use of the land plot as “for integrated development of the territory”.

Since December 24, 2014, a new land classifier has been applied. This document also does not provide for such type of use of the land as “for integrated development of the territory”. In 2019, residential development as a permitted use of the land plot with an indication of the number of buildings’ stores was introduced into the Classifier in 2019. The content of this use includes the placement of various types of residential buildings and residential infrastructure facilities. However, such use of a land plot can be carried out in the order of not only integrated development of territories, but also other actions, such as integrated development of territories, development of built-up territories, etc.

As can be seen from the foregoing, the integrated development of territories from a theoretical point of view cannot be recognized as a type of permitted use, since it is not limited to this concept.
In addition, incorrect information about the type of permitted use of the land may have specific practical consequences. In particular, the cadastral value, which serves as the basis for calculating the tax, is determined on the basis of the type of permitted use specified in the documents.

Integrated development of the territory is closely connected with the development of built-up territories. Along with the development of built-up territories and the reconstruction of territories with existing capital development, it is necessary to improve the street planning structure, improve the public services system, landscape formation, maximizing the originality of the architectural appearance of residential and public buildings, their modernization and reconstruction, reconstruction and adaptation to modern use of historical monuments and culture.

Particular attention should be paid to the development of residential areas. It is necessary to create residential areas to ensure a comfortable, healthy and safe living environment for the population. When forming a residential zone, it is necessary to choose the territory that is most favorable in sanitary-hygienic and engineering-geological terms and requires minimal engineering training, work planning and measures to maintain the natural state of the environment [5].

Architectural and planning decisions for the development of a residential area should be combined with technical solutions developed simultaneously.

When determining the size of the territory of residential areas, one should start from the need for a phased implementation of the housing program. The volume of housing stock and its structure are determined on the basis of the analysis of actual and forecast data on the composition of families of the population, income levels, existing and prospective housing provision, taking into account the need to provide each family with a separate apartment or house [6].

For the state and municipal housing stock, we also take into account the social norms of the living space, which are determined in accordance with the legislation of the Russian Federation and the regulatory legal acts of the constituent entities of the Russian Federation.

For commercial construction, the volume of housing is established on the basis of the design assignment [7]. Estimated indicators of housing for low-rise and individual housing construction are not standardized.

In determining the proportion of types of new buildings, it is necessary to take into account the specific development opportunities of micro districts and settlements, the availability of territorial resources, urban planning, historical and architectural features, as well as the existing construction base.

The placement of new individual and low-rise residential buildings should take place within urban districts and settlements, taking into account the possibility of connecting facilities to utilities, organizing transport links, providing social institutions and service enterprises.

Since March 1st, 2015, developers no longer have the right to acquire land ownership; but one can still rent land for construction. One of the few exceptions to the rule is when the developer erects an object on the site of demolished residential objects, for example, during the resettlement of dilapidated or emergency housing. In this case, the construction company buys the old fund and receives the land in the property as communal property [8].

The land is better protected by the law if it is in someone’s property, and more important for the contractor. With rent, things are different: its validity period may expire, and the developer will have to extend the contract or acquire land ownership. It is unlikely that this will affect the owners of apartments. When it comes to renting real estate, there is some risk for shareholders that if the rent is not paid, the construction sites will be recognized as unauthorized construction. The presence of a land plot by the developer on the basis of ownership is the most attractive aspect for equity holders when buying an apartment under an agreement on shared participation in construction. If the land belongs to the developer on a lease basis, this means that the land has another owner (lessor), usually the state.

Thus, in case of violation of the conditions for the execution of the investment contract, the expiration of the lease of the land plot or non-payment of the rent for it, the risk of becoming a “deceived shareholder” increases. Information on whether the land is leased or owned is contained in the project declaration of the residential complex [9].
It is more profitable for the developer to rent a land plot for the construction of residential real estate than to buy it, because the cost of rent is much less than the purchase price of the land. On average, these costs amount to about 10-15% of the total project cost. In addition, large cities face certain difficulties in obtaining ownership of real estate due to the complex bureaucratic process.

And in the case of ownership of land, and in the case of lease, developers are interested in building and putting the facility into operation as soon as possible. This allows you to reduce rents and taxes. Moreover, if the land belonging to the developer is not used, the developer is forced to pay increased taxes in a few years.

As a rule, there is no difference in price between housing in a new building on leased land and on a registered land plot, since in both cases the developer costs are comparable.

Particular attention should be paid to the procedure for the transfer by the developer of the joint construction project to equity holders with the right to a land plot. Since a residential building is an immovable property inextricably linked with the land, the developer, at the same time as the apartments are being transferred to equity holders, also transfers the land to the common property of citizens.

Government agencies actively support developers in the construction of apartment buildings, offering various incentives. According to Clause 13.1 Clause 2, Article 39.6 of the Land Code of the Russian Federation, a lease contract for a state or municipal land plot is concluded without an auction if the land plot is intended for development for the construction of standard housing or for the integrated development of the territory for the construction of standard housing for a legal entity that has entered into an agreement on the development of the territory for the construction of standard housing [10].

Providing the contractor with land for the construction of apartment buildings without bidding became possible with the adoption of the Federal Law "On Assistance in the Development of Housing" dated July 24, 2008 No. 161-FL. The conclusion of a lease of land without a tender occurs simultaneously with the signing of an agreement on the integrated development of the territory [11].

Buying land without auctions is very profitable and economically feasible. The rent for the use of the land without a tender, concluded on the basis of an integrated development agreement for the territory, is 1.5% of the cadastral value of the land.

The land lease agreement concluded without tendering is a derivative of the agreement on the development of the built-up territory. As soon as the developer loses the right to develop the territory, accordingly, the preferential right to use the corresponding land plot is also lost, since it was not provided independently, but as a means of implementing the development agreement. A land lease agreement concluded without an auction is a derivative of the agreement on the development of the built-up territory. As soon as the developer loses the right to develop the territory, therefore, the preemptive right to use the respective land plot is also lost, since it was not provided independently, but as a means of implementing the development agreement.

However, the agreement on the integrated development of the territory may provide for the division of responsibilities for the construction, for example, of infrastructure between the parties to the agreement. Failure to fulfill the obligation of one of the parties under the contract may result in non-fulfillment of obligations by the other party. For example, a local government has committed itself to organizing the construction of certain infrastructure facilities. In this regard, it is possible in the lease of a land plot provided for the integrated development of the territory for a certain period of time. It is also advisable to provide the possibility of extending the validity of this agreement for a period equal to the period of inability to fulfill the agreement on the integrated development of the territory through the fault of a public partner with the establishment of a mechanism for fixing the beginning and the end of such a period and adjustments to the amount of the lease payment. In this case, the protection mechanism of both the developer himself and the equity holders of such housing construction is strengthened.
Thus, the developer during the construction of an apartment building has a preferential right to conclude a land lease agreement without bidding. Simultaneously with the conclusion of a land lease agreement with the developer, an agreement is concluded on the integrated development of the territory. The termination of the lease for the integrated development of the territory leads to the termination of the lease of land. For a developer, renting property without an auction is attractive because of the low rental costs, which make up 1.5% of the cadastral value of land. In addition, state bodies actively help developers in case of prolongation of a land lease agreement, since the state is interested in the construction of multi-apartment buildings and their commissioning.

3. Conclusion

Based on the foregoing, a proposal has been formulated on the need for legislative consolidation of the type of permitted use of a land plot, such as “integrated development of the territory” with its subsequent change in relation to the newly formed land plots after development and the start of operation. This will lead to the enforcement practice of holding an auction or providing land without an auction for these purposes according to law. A mechanism will also be created to stimulate this type of economic activity by forming the size of payments for a land plot based on the cadastral value calculated for this type of land use.

In order to stimulate housing construction and provide additional economic protection for both the developer and the co-investors, who ultimately bear the burden of compensating the costs for the proper fulfillment of the obligations of both private and public partners under the integrated development agreement, it is necessary to provide additional protective conditions for the lease agreement land in terms of a possible interruption in its operation through the fault of a public authority or local government.

References

[1] Abyanov R R 2019 The influence of certain macroeconomic factors on the real estate market and the renovation program of the fund in Moscow Housing Law [in Russian – Zhilischnoe Pravo] 1 19-25
[2] 2005 Russian Federation. The laws. Town Planning Code of the Russian Federation [Federal Law No. 190-FZ: adopted by the State Duma December 22, 2004: as amended from December 27, 2019] Meeting of the legislation of the Russian Federation No 1, Art 16
[3] Krassov O I 2016 Land Law (Moscow: Norma)
[4] Bandorin L E 2016 Environmental Law (Moscow: Velby)
[5] Selyutina L G 2016 Problems of Optimizing the Structure of Housing Construction in a Large City in Modern Conditions (Saint Petersburg: Saint Petersburg State University of Economics)
[6] Varlamov A A, Galchenko S A, Antropov D V, Kuznetsova S G and Sinitsa Yu S 2019 Features of townland management IOP Conference Series: Earth and Environmental Science 350 012051
[7] Martkovich I B 2016 Housing Law. Law and Practice (Moscow: Legal literature)
[8] 2008 Russian Federation. The laws. On the promotion of housing [Federal Law No. 161-FZ: adopted by the State Duma July 4, 2008: as amended from December 31, 2017] Meeting of the legislation of the Russian Federation No 30 (part 2), Art 3617
[9] Narysheva N G 2015 The legal nature of acts establishing the legal regime of land plots Jurisprudence [in Russian – Yuridicheskaya nauka] 4 86-91
[10] 2001 Russian Federation. The laws. Land Code of the Russian Federation [Federal Law No. 136-FZ: adopted by the State Duma on September 28, 2001: as amended from December 27, 2019] Meeting of the legislation of the Russian Federation No 44, Art 4147
[11] 2008 Russian Federation. The laws. On the promotion of housing [Federal Law No. 161-FZ: adopted by the State Duma July 4, 2008: as amended from 31 December 2017] Meeting of the legislation of the Russian Federation No 30 (part 2), Art 3617