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Slavich Maria Anatolyevna

DEVELOPERS' INSOLVENCY (BANKRUPTCY) LEGAL REGULATION FEATURES

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Belykh Vladimir Sergeevich

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INTRODUCTION

The relevance of the research topic is due to socio-economic, law enforcement, law-making, and doctrinal aspects.

Socio-economic aspect. The solution to the issue of "defrauded shareholders", due to its social significance, is under the special control of the President of the Russian Federation. At the same time, it was not possible to resolve this problem within the previously established period (before 01/01/2022). The reason for this could be, among other things, measures to limit the new coronavirus infection spread. In this regard, the legislator extended the validity of incentive and compensatory measures provided to ensure the completion of construction of problematic facilities[1].

Tangible consequences entailed illegal economic sanctions imposed by unfriendly countries against the Russian Federation as a result of the russophobic ideology of unfriendly countries. Rising prices for building materials, increasing interest rates on mortgage loans, and the inability to obtain project financing at acceptable interest rates (in terms of the ratio of construction costs, taking into account such rates, to the purchasing power of the population) led to the fact that 40% of construction companies throughout Russia froze for an indefinite period of time, the construction of the facilities they are constructing[2].

At the same time, everyone's right to housing is a constitutional right, guaranteed by Art. 40 of the Constitution of the Russian Federation[3]. Therefore, the negative impact of these factors on the construction industry, one of the extreme manifestations of which is construction organizations bankruptcy engaged in housing construction, entails serious social consequences.

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[1]Explanatory note to the federal law draft "On amendments to Article 8 of the Federal Law "On amendments to the Federal Law "On participation in shared-equity construction of apartment buildings and other real estate and on amendments to certain legislative acts of the Russian Federation" and certain legislative acts of the Russian Federation Federation". URL: https://sozd.duma.gov.ru/bill/29915 (application date11.01.2022).

[2]URL: https://www.kommersant.ru/doc/5272146?from=top_main_5 (application date 03.04.2022).

[3]Hereinafter, regulatory legal acts and materials of judicial practice are given according to the SPS "ConsultantPlus".

In order to support the construction industry and prevent mass bankruptcy of developers, the Government of the Russian Federation decided that until 01/01/2023, apartment buildings and other objects for which the developer has missed completion deadlines for more than 6 months will not be included in the unified register of problematic objects construction[4]. This and other unprecedented measures[5] certainly "froze" the possibility of developers' bankruptcy for the period specified in the regulations of the Government of the Russian Federation and significantly supported organizations in the construction industry.

At the same time, the negative processes that occurred in connection with illegal economic sanctions of unfriendly countries against the Russian Federation in the Russian economy even in a short period (before its adaptation to new economic realities and the appearance of the effect of the measures taken by the President of the Russian Federation and the Government of the Russian Federation) showed that the risks investing in shared construction cannot be fully resolved only by using escrow accounts for calculations. Today it is obvious that this model is effective in case of economic stability. In a situation where the funds deposited in escrow accounts, if not depreciated, have significantly "fell in price" due to the high level of inflation, their guaranteed return to equity holder no longer provides him with the opportunity to achieve the goal of purchasing housing. The solution to this problem is possible only if facility construction in which the participant in shared construction has invested money is completed.

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[4]Decree of the Government of the Russian Federation dated March 26, 2022 № 479 "On establishing the specifics of the application of penalties (fines, penalties), other financial sanctions, as well as other measures of liability for non-fulfillment or improper fulfillment of obligations under agreements for participation in shared construction, established by the legislation on shared construction, and on the specifics of inclusion in the unified register of problematic apartment buildings and (or) other real estate objects in respect of which the developer has violated the deadlines for completing the construction (creation) of an apartment building and (or) other real estate object and (or) transfer obligations for more than 6 months shared construction object to a participant in shared construction under a registered agreement for participation in shared construction."

[5] Decree of the Government of the Russian Federation dated March 28, 2022 № 497 "On the introduction of a moratorium on the initiation of bankruptcy proceedings on applications filed by creditors" introduced a moratorium for 6 months on the initiation of bankruptcy proceedings in relation to all categories of debtors except developers whose properties as of March 28, 2022 included in the unified register of problematic objects.

On the other hand, at the level of falling demand, developers are forced to reduce prices while, at the same time, cost increases due to the rise in prices for construction resources[6]. These circumstances certainly have a negative impact on the financial model of the project, which risks failing, that could lead the developer to bankruptcy.

Law enforcement aspect. From the date of inclusion in Ch. IX Federal Law of October 26, 2002 No. 127-FZ "On Insolvency (Bankruptcy)" (hereinafter referred to as the Bankruptcy Law) § 7 Ch. The IX rules on developer bankruptcy have undergone significant changes more than once. Therefore, even the almost ten-year history of these special rules application did not allow judicial practice to form uniform, sustainable approaches to resolving controversial issues in this area.

Legislative aspect. The changes made by the legislator over the past three years to the legal regulation of developers' bankruptcy actually have a reform nature of this legislation. At the same time, the speed of making relevant decisions negatively affects legal technology and the quality of adopted norms. Of course, the special social urgency of the legal relations regulating that we are talking about forces the legislator to act quickly. However, such a rush, unfortunately, not only does not allow improving the provisions of § 7 Ch. IX of the Bankruptcy Law, but also gives rise to new controversial issues caused by contradictions that arise as a result of changes in certain rules. The latter, we believe, is due to the fact that these changes are targeted in nature, aimed at solving specific (often practical) problems and are not based on a systematic approach.

Doctrinal aspect. In view of the above, the composition of developers' bankruptcy signs as a special category of debtors is relevant for study; the legal nature of the methods for restoring construction participants' claims rights (settling), set by special rules on developers' bankruptcy; the legal nature and terms of the agreement on the transfer to the acquirer of a land plot with inseparable improvements located on it and developer obligations. In addition, from the perspective of the issues under study,

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[6] Pleshanova O.P. Vliyanie schetov eskrou na process bankrotstva zastrojshchikov. Mekhanizmy bankrotstva i ih rol' v obespechenii blagosostoyaniya cheloveka [The influence of escrow accounts on the process of bankruptcy of developers. Bankruptcy mechanisms and their role in ensuring human well-being]. Resp. ed. S.A. Karelina, I.V. Frolov. Moscow, 2022. P. 124.

it makes sense to analyze the possibility of multiple bodies on the debtor's side, which is being explored in the doctrine.

The degree of scientific development of the research topic. In the domestic doctrine there is a significant number of works devoted to the institution of insolvency (bankruptcy). Among them, we should highlight the works of V.S. Belyh, V.V. Vitryanskij, A. Gol'msten, A.V. Egorova, S.A. Karelina, V. F. Popondopulo, M.V. Telyukina, V.A. Himichev, G.F. SHershenevich. Special research in this area was carried out by A.A. Kirillov, A.P. Kuznetsov, I.V.Frolov, T.P. Shishmareva. Features of deveopers' insolvency (bankruptcy) were considered in the candidate dissertations of A.V. Altukhova, M.P. Barabina, M.V. Krushevskaya, E.I. Pivtsaeva.

However, it should be noted here that the works of recent years mainly touch upon certain aspects of developers' insolvency (bankruptcy) institution rules application, and more fundamental works were created before the introduction into the provisions of § 7 of Chapter. IX of the Bankruptcy Law fundamental changes. These circumstances determine the relevance of this dissertation research.

The object of the study has become the totality of social relations that arise during developer's insolvency (bankruptcy).

The subject of the research are the norms of legislation on insolvency (bankruptcy), on participation in shared construction, on citizens participating in shared construction rights protection, the practice of applying these norms, scientific works on the problems of insolvency (bankruptcy) in general and developers' insolvency (bankruptcy) in particular.

The purpose of the study is to identify controversial (problematic) issues in the legal regulation of developers' insolvency (bankruptcy) and law enforcement practice, determine ways to solve them and, on this basis, develop proposals for improving the current legislation in this area.

Achieving this goal was ensured by solving the following **tasks**:

1) study the history of the development of legislation on developer's insolvency (bankruptcy) and analyze possible legislative trends in this area;

2) consider the concept and signs of insolvency (bankruptcy), study the validity of the requirement for their presence and content in relation to developer's insolvency (bankruptcy);

3) examine the subject composition of cases of developer's insolvency (bankruptcy) and give its general characteristics, taking into account the proposals made in the doctrine on its content;

4) analyze the developer concept legal definition content for the purposes of applying special provisions of § 7 ch. IX of the Bankruptcy Law, to identify signs the presence of which allows a debtor to be classified as a developer in terms of bankruptcy legislation provisions, as well as proposals formulated in the doctrine on the composition and content of such signs;

5) examine the legal status of a construction participant in an insolvency (bankruptcy) case, the composition of bodies who can be classified as this preferential category of creditors;

6) пconduct an analysis of methods for repaying the claims of construction participants in developer's insolvency (bankruptcy) case, disclose their content, procedure and conditions for implementation.

Methodology and research methods. The methodological basis of the study was a combination of general scientific and special methods: the dialectical method of cognition, methods of analysis and analogy, synthesis, inductive and deductive, systemic methods, methods of interpretation of legal norms, technical and legal analysis, historical and legal, formal legal, logical.

In particular, the use of general scientific methods made it possible to reveal the content and characteristics of the legal concepts and structures being studied. Using the systematic method and the method of interpretation, the meaning and significance of the relevant legal norms, the purpose of their application and ways to improve them were clarified. The use of the specification method made it possible to gradually identify the signs of the analyzed legal phenomena. To identify gaps in the legal regulation of the research object, a modeling method was used. The assessment of the effectiveness of legal regulation of the social relations under study was carried out using the

methods of axiology and teleology (methods for assessing means to achieve their goals with their help).

The theoretical basis of the study was made up of works on the general theory of law, the theory of civil and business law, works devoted to the analysis of the institution of bankruptcy, including the bankruptcy of a developer: S.S. Alekseev, V.N.Belousov, V.S. Belykh, M.I. Braginsky, V.V. Vitryansky, B.M. Gongalo, A.V.Egorov, M.A. Egorova, E.E. Enkova, E.G. Dorokhina, T.I. Illarionova, S.A. Karelina, O.A. Krasavchikov, A.P. Kuznetsov, P.A. Markov, L.A. Novoselova, A.A. Pakharukov, O.P. Pleshanov, V.F. Popondopulo, E.A. Ryzhkovskaya, A.P.Sergeev, Yu.S. Speranskaya, E.A.Sukhanov, M.V. Telyukina, S.V. Tychinin, I.V.Frolov, V.A. Khimichev, I.M. Shevchenko, T.P.Shishmareva, E.S. Yulova, V.F.Yakovlev and others.

The regulatory framework for the study is the Constitution of the Russian Federation, the Civil Code of the Russian Federation (hereinafter referred to as the Civil Code of the Russian Federation), the Bankruptcy Law, the Federal Law of December 30, 2004 No. 214-FZ “On participation in shared construction of apartment buildings and other real estate and on the contribution amendments to certain legislative acts of the Russian Federation" (hereinafter referred to as Law No. 214-FZ), Federal Law dated July 25, 2017 No. 218-FZ "On the public law company "Territory Development Fund" and on amendments to certain legislative acts of the Russian Federation", other federal laws, regulations and documents.

The empirical basis of the study is decisions of the plenums of the Supreme Court of the Russian Federation, the Supreme Arbitration Court of the Russian Federation, information letters and reviews of judicial practice on issues arising during the consideration of insolvency (bankruptcy) cases, decisions of arbitration courts of districts, arbitration courts of appeal, decisions and rulings of arbitration courts of first instance.

Scientific novelty of the research. This dissertation represents one of the first comprehensive scientific studies of developer’s insolvency (bankruptcy) after the reform of legislation in this area. The author comprehends the insolvency criteria developed in science, the general choice of the legislator in favor of insolvency criterion and

deviations from general signs of bankruptcy made when regulating developer's insolvency. The features of developer's insolvency (bankruptcy) cases subject composition and legal status of their key subjects are determined. Methods of satisfying the requirements of construction participants were explored, which made it possible to identify the presence of signs of legal structures and phenomena known in civil law. Classifications of the provided methods of satisfying the requirements of construction participants on various grounds are proposed, and their comparative legal analysis is carried out.

Theoretical significance of the study. The conclusions obtained from the research have theoretical and practical (legislative and law enforcement) significance. In particular, signs of developer's insolvency (bankruptcy) are identified, the legal nature of the special methods set in developer's insolvency (bankruptcy) cases satisfing the requirements of construction sites are revealed, as well as the content of legal relations arising during their implementation, the procedure for their registration, etc.

The results of the study can be used in further scientific developments.

Practical significance of the study. The proposals formulated during the work can be taken into account when improving the legislation on developer's insolvency (bankruptcy). The dissertation author's conclusions and their argumentation can be used in the activities of arbitration courts when considering developers's insolvency (bankruptcy) cases, also when resolving disputes considered in the procedure of litigation between the new bankrupt developer rights and obligations developer acquirer and bodies who are the other party in the case, contracts, the rights and obligations under which were transferred to the acquirer. The materials of the work can be used when teaching courses in civil and business law, elective courses on insolvency (bankruptcy) issues, when considering specific issues about the peculiarities of insolvency (bankruptcy) of certain categories of debtors, in the development of educational and teaching aids.

The reliability of the research results is confirmed by its theoretical basis, normative and empirical basis. During the study, the works of outstanding representatives of science were studied, the provisions of the current legislation were analyzed, special

attention was paid to legislative innovations and assessing the consequences of their application when considering cases of developers's insolvency (bankruptcy). The materials of law enforcement practice, judicial acts of both the highest court and lower courts were studied.

Approbation of research results. The work was discussed and reviewed at the Department of Business Law of the Ural State Law University named after V.F. Yakovlev. The main provisions and conclusions of the study are reflected in the author's scientific articles, including those published in publications recommended by the Higher Attestation Commission under the Ministry of Education and Science of the Russian Federation.

The main conclusions of the dissertation were contained in scientific reports at the VII International Scientific and Practical Conference "Protection of Human Rights in Modern Conditions: Theory and Practice" (Branch of the Educational Institution of Higher Education "SPb IVESEP" in Perm), a report on the topic "Ensuring the constitutional right to housing in bankruptcy of a developer: problems of legislative regulation and law enforcement practice", II International Scientific and Practical Conference Yakushevsky Reading "Current Problems of Civil and Business Law" (Ural State Law University), report on the topic "Developer as a subject of insolvency (bankruptcy).

The structure of the dissertation is determined by the purpose and objectives of the research. The dissertation consists of an introduction, three chapters including eight paragraphs, a conclusion, a list of sources used and an appendix containing generalized proposals for amending the legislation on the insolvency (bankruptcy) of a developer.

Main scientific results.

1. Essential features have been identified, the place in the system of traditional institutions of civil and procedural law has been determined for special methods enshrined in the legislation on developer's insolvency (bankruptcy) of ways to satisfy the requirements of construction participants within the framework of the bankruptcy

procedure of the developer[7], used for legal means implementation[8], aas well as legal phenomena generated by judicial practice[9], its author's definitions are formulated.

2. The features of the composition of developer's bankruptcy signs, the mandatory presence of special (inherent only in cases of insolvency (bankruptcy) of a developer) signs, as well as the difference in the composition of essential signs depending on who initiated developer's insolvency (bankruptcy) case have been established. In case of developer's insolvency (bankruptcy), it is proposed to be guided by the criterion of non-payment of the debtor[10].

3. It is proposed to allow a plurality of bodies on the debtor's side (procedural consolidation) in cases developers' of insolvency (bankruptcy). The key when deciding whether to allow such multiplicity is not the attribution of debtors to one group, but the presence of construction participants in the requirements for these debtors in relation to identical objects[11].

Provisions submitted for defense.

1. It was revealed that developer's bankruptcy signs list is not identical to the list of other debtors bankruptcy signs, carried out according to general rules. In particular, the list of developers bankruptcy signs depends on which of the bodies entitled to apply to the court for developer's insolvency (bankruptcy) initiates the bankruptcy case.

Special signs of bankruptcy have been established, the presence of which is a prerequisite for the application in a bankruptcy case of the special provisions of § 7 Ch. IX of the Bankruptcy Law: the debtor has claims for the transfer of residential premises, parking spaces, non-residential premises (with an area of no more than 7 sq. m), a block

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[7] Slavich M.A. The legal nature of replacing a developer in a case of insolvency (bankruptcy) of a developer. Business, Management and Law. 2023. №. 4. P.52-55.

[8] Slavich M.A. Replacement of the developer as a transfer of contracts by force of law: what risks should the acquirer take into account. Business, Management and Law. 2024. № 1. P. 79-82.

[9] Slavich M.A. The legal nature of the transformation of the claim of a participant in shared construction in the case of insolvency (bankruptcy) of the developer. Business, Management and Law. 2023. № 1. P. 37 – 42.

[10] Slavich M.A. Insolvency (bankruptcy) of a developer: definition criteria and signs. Lawyer. 2023. № 2. P. 49-55; Slavich M.A. New bankruptcy rules for developers: content and prospects. Arbitration and civil process. 2019. № 10. P. 37-43.

[11] Slavich M.A. Plurality of persons on the debtor's side in cases of insolvency (bankruptcy) of developers. Lawyer. 2021. № 5. P. 37-42.

building, an individual residential building or monetary claims (arising on the basis of agreements providing for the transfer of ownership counterparty of the specified premises/buildings); the transfer to construction participants will include premises in an apartment building or building (structure) intended exclusively for placing parking spaces, a block building (if the number of such houses is three or more in one row), an individual residential building (if its construction was carried out in accordance with Law No. 214-FZ).

2. It is argued that in developer's bankruptcy, it is advisable to be guided not by the criterion of insolvency chosen by the legislator as the main one, but by the criterion of non-payment of the debtor, also developed in the doctrine and assuming the inability of the debtor to pay the debt in general.

The developer's debt in the amount of 300 thousand rubles, the payment obligations of which have not been fulfilled within three months, should not be the main, but an optional feature. Taking into account the special social significance of the bankruptcy of developers, a mandatory sign of its insolvency (bankruptcy) should be the establishment of insufficient property of the developer to satisfy its obligations, including non-monetary obligations, to construction participants.

3. The necessity is substantiated to allow in some cases the possibility of consolidating bankruptcy cases of several debtors (multiple bodies on the debtor's side) in order to effectively protect the rights of citizens participating in construction.

In case if several debtors have claims from construction participants in relation to identical objects, it is advisable to provide for the maintenance of a single register of claims of construction participants of all debtors in relation to each construction project, while keeping separate maintenance of bankruptcy creditors claims register of each debtor.

4. The signs of such a legal phenomenon as the transformation of claims in insolvency (bankruptcy) cases are identified and the author's definition is formulated. Transformation of a creditor's claim in an insolvency (bankruptcy) case is a change in

the form of recording the claim in the register of claims of the debtor's creditors, authorized by the arbitration court, carried out at the will or against the will of the authorized person.

It is substantiated that the transformation of the claim of a construction participant in a case of developer's insolvency (bankruptcy) is a special case of a change in the method and procedure for executing a judicial act.

5. It is argued that provided for in Art. 201.15-1, art. 201.15-2 of the Bankruptcy Law, the method of satisfying the claims of construction participants is:

1) transfer by force of law to a new developer (purchaser) of contracts of the debtor (bankrupt developer) (transfer of agreement) with construction participants, design organizations, technical customer, general contractor, other agreements concluded for the purpose of completing the construction of unfinished construction projects by the bankruptcy trustee during bankruptcy proceedings;

2) legal means, which is a type of such a universal one enshrined in Art. 12 of the Civil Code of the Russian Federation of the method of protecting the right, as a change in the legal relationship;

3) not set by Chapter 14 of the Civil Code of the Russian Federation, the basis for the emergence of ownership of a land plot/object of unfinished construction from a court decision (definition) (Article 8 of the Civil Code of the Russian Federation);

4) one of the cases of the use of legal fiction in law.

6. It has been proven that the agreement for the transfer to the acquirer of a land plot with inseparable improvements and obligations of the developer located on it is a special type of organizational agreement. It has the following characteristic features: this agreement is concluded in the presence of obligatory relations (share participation agreements, general contract agreements, etc.), and not with the aim of their future occurrence; the parties to the agreement do not coincide with the parties to the main agreements, in relation to which the transfer agreement performs an organizational and coordinating function.

The author's definition of this type of organizational agreement is formulated. An agreement for the transfer to the acquirer of a land plot with inseparable improvements and obligations of the developer located on it is a special organizational agreement to be concluded between the party retiring from the obligational legal relationship and its singular legal successor in order to ensure legal certainty of the composition of the parties in such obligational relationships for their subsequent proper execution.

7. The legal nature of the enshrined art. 201.10 of the Bankruptcy Law is a method of satisfying the claims of construction participants as compensation. The agreement of the parties is formalized as follows: the offer of the debtor developer is to convene a meeting of construction participants by the bankruptcy trustee. Construction participants accept the offer sent to them in this way either directly (by voting “for” a decision on the relevant issue put on the agenda) or indirectly, actually through silence (by not voting at the meeting or by refraining from indicating their position).

The developer's obligation to construction participants is terminated by granting them, as a compensation right, a share in a housing construction or other specialized consumer cooperative as the owner of an unfinished construction project, a land plot (rights to a land plot).

CHAPTER 1. GENERAL CONDITIONS ON DEVELOPER'S INSOLVENCY (BANKRUPTCY)

§ 1. Evolution of legislation on developer's insolvency (bankruptcy)

Some provisions of bankruptcy law, which appeared in Ancient Rome, Russian legislation have known since the Russian Pravda time[12]. However, Russian bankruptcy legislation received its main development only in the 18th century[13]. Among the legislative acts of that period, the Bankruptcy Charter of 1740 should be highlighted. Although this Charter was not approved and applied in practice, it constituted "our first code of bankruptcy laws"[14]. The next milestones in the bankruptcy legislation development were the Bankruptcy Charter of 1800 and the Insolvency Charter of 1832, and during their creation, foreign legislative experience was largely borrowed. Subsequently, changes to bankruptcy legislation were made by decrees of the Governing Senate. In general, according to G.F. Shershenevich, bankruptcy legislation of that period was difficult to interpret and apply[15].

Characterizing Soviet competition legislation, one should agree with M.V. Telyukina's opinion that due to the Soviet competition peculiarities (lack of discretion in the competition process officials appointment, the exclusion of creditors from participating), it represented an anomaly of competitive relations. Its provisions did not protect the legitimate interests of creditors and debtors, but were aimed at ensuring a general economic result, which is not typical of bankruptcy law[16].

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[12]V.I. Mikhailova, O.V. Monchenko; eds. S.A. Scientific works on insolvency (bankruptcy). 1847–1900, Moscow, 2020. T. 1. P. 7. (in Russian).

[13] Popondopulo V.F. Bankruptcy. Legal regulation. 2nd ed., rewr. and ad. Moscow. P. 23; Insolvency (bankruptcy): 2 V. Ed. by S.A. Karelina. Moscow, 2019. V. 1. P. 28.

[14] Golmsten A. Bankruptcy Charter of 1740. Scientific works on insolvency (bankruptcy). 1847–1900. V. 1. P. 206.

[15] Quote: Insolvency (bankruptcy). ed. by S.A. Karelina. V. 1. P. 33.

[16] Telyukina M.V. Fundamentals of bankruptcy law. Moscow, 2004. P. 57.

With Russia's transition to a market economy, Russian bankruptcy legislation entered a new development stage[17], and it progressed quite dynamically. Thus, on November 19, 1992, the Law of the Russian Federation “On the insolvency (bankruptcy) of enterprises” was enacted. The shortcomings identified during its application became the basis for the enacting in 1998 of the new Federal Law “On the insolvency (bankruptcy)”. Along with it, federal laws regulating the bankruptcy of certain debtors categories were enacted: dated 02.25.1999 No. 40-FZ “On the insolvency (bankruptcy) of credit organizations”, dated 06.24.1999 No. 122-FZ “On the peculiarities of insolvency (bankruptcy) of the fuel and energy complex natural monopolies subjects"[18]. Due to the further development of relevant relations and law enforcement practice, the current Federal Law “On the insolvency (bankruptcy)” (hereinafter referred to as the Bankruptcy Law or Law No. 127-FZ) was enacted. In turn, the formation of developers’ bankruptcy legislation began with the housing market creation, which, with the implementation of Law No. 1305-1 of March 6, 1990 “On property in the USSR,” began to function legally[19].

The stratification of society by income level became one of the main results of the economic model change in our country. People with entrepreneurial abilities, having acquired the opportunity to secure high incomes, could afford improving their living conditions. However, the needs of society in this area could not be adequately satisfied by the existing residential real estate market, which at that time was in its embryo state. At the same time, according to the market economy laws, the market’s reaction to the increase in demand for housing was an increase in the number of developers, whose activities did not always meet the necessary level of requirements. The emergence of “problematic” construction projects during the concerned period was determined by the following main factors:

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[17] Popondopulo V.F. Bankruptcy. Legal regulation. P. 25.
[18] Ib. P. 26–27.
[19] Yakovlev A.A. Formation of residential real estate market in modern Russia history. Problems of modern economics. 2010. № 2 (34). P. 405.

firstly, the lack of a proper legislative framework. This circumstance contributed to unscrupulous developers emergence;

secondly, the lack of qualified personnel. Construction is a complex, integrated process that includes organizational, engineering and survey, design, construction and installation, and commissioning work. Its effectiveness depends on many circumstances[20]. Human resource potential is one of them. Moreover, experts highlight low personnel qualifications as one of the main reasons that did not allow the construction industry in the early 90s. of the last century to provide a decent supply to the increased demand in the housing market[21].

The result of these circumstances was a number of high-profile large developers bankruptcies. Among them is the bankruptcy of KT "Social Initiative and Company". Based on this organization, which carried out construction in Moscow and also had branches in 15 constituent entities of the Russian Federation, activities results, 98 criminal cases were initiated, about 5 thousand people were recognized as victims. The bankruptcies of the St. Petersburg developer IVI-93 (founded in 1993), ZAO PSF Nord (PSF Nord, CJSC), ZAO Energostroykomplekt-M1 (Energostroykomplekt-M1, CJSC) became scandalous[22].

Considering these cases confirmed a fairly obvious objective need for systemic legal regulation of relations that develop in connection with citizens participation in investment activities (financing an apartment building at the construction stage). The bankruptcy legislation also required changes, since developers bankruptcy cases consideration in those years was carried out according to general rules, without taking into account the specifics of these cases[23].

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[20] Butrenin A.A., Drobishevskaya L.N. Formation of an effective management system for investment and construction complex in region. Terra Economicus. 2012. V. 10. № 3-2. P. 154.
[21] Kuznetsov A.P. Developer bankruptcy: theory and practice of protecting construction participating citizens' rights. P. 9.
[22] TIb. P. 10–12.
[23] Shishmareva T.P. Protection of shareholders rights under shared construction participation agreement when developer is declared insolvent (bankrupt). Legal issues of construction. 2010. № 1. P. 22–25.

Citizens who contributed funds to the developer to obtain residential premises ownership were placed alonside with other creditors. Thereafter, their claims were satisfied in the general manner, they could only count on monetary compensation, but if the debtor's property was insufficient to satisfy the creditors' claims, full restoration of their rights was actually impossible[24].

The design of the shared participation agreement that has developed in practice was legislatively enshrined in Federal Law No. 214-FZ of December 30, 2004 "On participation in shared-equity construction of apartment buildings and other real estate and on amendments to certain legislative acts of the Russian Federation" (hereinafter referred to as Federal Law No. 214 -FZ). Although this normative act is actively criticized in the doctrine due to the legal structures used inconsistency in relation to the civil legislation fundamentals and the legal technique used imperfections, it also has supporters. Experts who defend Federal Law No. 214-FZ note that its enaction made it possible to resolve many problems accumulated during the time when the legal relationship between the developer and participants in shared construction was not regulated by law[25]. Among the positive aspects there are: the legalization with its help the developer's responsibility law enforcement practice, the further evolution of these relations towards ensuring the protection of shared construction participants property interests[26].

At the same time, the mere issues settlement of citizens' participation in the apartment buildings and other real estate construction financing did not help resolve

[24]Porokhova A., Podolyanets L. Possibilities of restoring construction organizations solvency, taking into account innovations of Federal Law "On Insolvency (Bankruptcy)". RISK: resources, information, supply, competition. 2011. № 3. P. 437–438.

[25] Romanenkova N.D. Acquisition of residential premises under shared construction participation agreement as a way to solve problem of providing citizens with housing in the Russian Federation. Modern problems of natural resource management and development of socio-economic systems: materials of the XII Intl. scientific conf. Ed. A.V. Semenova, N.G. Malysheva, Yu.S. Rudenko. 2016. P. 256; Yaroshevskaya A.M. Problems of legal regulation of agreements for participation in shared construction of apartment buildings. Vestn. of legal Faculty of the Southern Federal University. 2020. V. 7. № 3. P. 75.

[26] Sobolev D.A. Civil liability of developer under shared construction participation agreement. Abst. dis. ...cand. of legal science. Moscow, 2011. P. 16.

the problems that arosing from developers' bankruptcy, the essence of which boiled down to the impossibility of satisfying the citizens constitutional right to housing by transferring housing ownership to them. Social tension increased; the legislator could not ignore this fact. As a result, in August 2011 Ch. IX of the Bankruptcy Law was supplemented with § 7 norms regulating developer organizations' insolvency (bankruptcy) specifics[27]. These changes were adopted on the eve of the parliamentary elections. It is possible that it was precisely this circumstance that influenced the increased social orientation of the new norms, the legislator's special attention to creating a real possibility of deceived citizens rights restoring[28]. Evidence of this is, first of all, the Supreme Arbitration Court Presidium of the Russian Federation legal position, which emphasized that "the main purpose of adopting special rules on the developers' bankruptcy is to ensure priority protection of citizens participating in construction as non-professional investors. The application of these rules should be aimed at achieving this goal, and not at preventing it."[29]

Subsequently, the provisions of § 7 were repeatedly amended, but until 2017 they were of a targeted nature. Here we can highlight:

addition to the Law Art. 201.15-1, 201.15-2 on the settlement of the developer's obligations to construction participants ("replacement" of the developer)[30]. It was due to the need to regulate the relations developing in practice to attract a new developer to complete the construction of a "problem" facility, satisfying the construction participants demands to transfer residential premises ownership to them;

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[27] Federal Law dated July 12, 2011 № 210-FZ "On amendments to the Federal Law "On Insolvency (Bankruptcy)" and Articles 17 and 223 of Arbitration Procedural Code of the Russian Federation in terms of establishing developers' bankruptcy who attracted funds from construction participants features".

[28] Kuznetsov A.P. Developer bankruptcy: theory and practice of protecting construction participating citizens' rights. P. 13.

[29] The Supreme Arbitration Court of the Russian Federation Presidium Resolution dated 24.04.2013 № 13239/12.

[30] Federal Law dated December 29, 2015 № 391-FZ "On amendments to certain legislative acts of the Russian Federation".

increasing the number of construction projects by including in their list, besides multi-apartment buildings, residential buildings of blocked development[31]. This made it possible to provide special protection in developers' bankruptcy cases to those citizens who invested their money in the construction of so-called townhouses[32]. This addition to the Law was also a legislative reinforcement of the objective reality requirements. If at the housing market development initial stage the well-being of Russian citizens allowed them to at most count on purchasing a separate apartment in an apartment building, then gradually low-rise construction, and later individual residential development, became much needed.

However, since 2017, the legislator has gradually introduced significant changes to the legislation on shared-equity construction and the Bankruptcy Law, the nature of which makes it possible to define them as developers' bankruptcy legislation reform[33]. The following circumstances served as the basis for this kind of radical changes.

The situation that had developed by 2017 indicated that despite all attempts to improve the legislation on shared-equity construction (primarily Federal Law No. 214-FZ)[34], tighten control over the developers activities, increase the number of ways to

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[31] Federal Law dated July 3, 2016 № 304-FZ "On amendments to the Federal Law "On shared construction participation of apartment buildings and other real estate and on amendments to some legislative acts of the Russian Federation" and certain legislative acts of the Russian Federation".

[32] Federal Law № 476-FZ of December 30, 2021 "On amendments to certain legislative acts of the Russian Federation" lists objects, citizens' rights existence, requirements of which makes it possible to apply the provisions of Law № 127-FZ on developer's bankruptcy to debtor's bankruptcy, supplemented by individual residential houses.

[33] Makhankov I.A. Peculiarities of legal regulation of developer bankruptcy in Russia. Issues of Russian and international law. 2020. V. 10. № 7-1. P. 88–89.

[34] Polukhina A.I., Yanyuk V.M. Changes in legislation regulating participation in shared-equity housing construction. Management of real estate objects and territory development. Collection of art. of Internat. scient.-pract. conf. Ed. by V.A. Tarbaeva. Saratov, 2017. P. 299–302; Pronina A.A. Current issues of protecting shareholders rights under shared construction agreement. Law and business: convergence of private and public law in regulating business activities: collection of art. of IV Annual international scient.-pract. conf., dedicated to the memory of the Honored Lawyer of the Russian Federation, Doctor of Law, Professor Korshunov N.M. Resp. ed. Yu.S. Kharitonova. Moscow, 2015. P. 614; Savina S.V. New developments in legal regulation of relations regarding shared construction participation: additional restrictions, new opportunities or compromise? Law. 2017. № 1. P. 136–146; Simkova Ye.V. Problems of shared construction and ways to overcome them. Intellectual resources for regional development. 2017. № 1–2. P. 360; Tsiganov A.A., Brizgalov D.V. Problems and prospects for using financial mechanisms to ensure developers' obligations to shareholders. Forecasting problems. 2016. № 6 (159). P. 112–118.

ensure guarantees for construction participants, introduce special control over the protection of citizens rights who have invested their money in the purchase of housing by the President of the Russian Federation[35] the number of "problem" objects, "deceived" shareholders not only did not decrease, but also continued to grow steadily[36]. As a result, the Government of the Russian Federation was given instructions to develop and implement within three years a set of measures aimed at gradually replacing citizens' funds raised for the apartment buildings and other real estate creation with bank lending and other financing forms that would reduce the risk for citizens, and also improve legislation in this area[37]. The first step was the enaction of the Federal Law of July 29, 2017 No. 218-FZ "On a public-law company for the protection of citizens rights participating in shared construction under developers' insolvency (bankruptcy) and on amendments to certain legislative acts of the Russian Federation."

That was a crying need indeed. Meanwhile, it should be noted that despite all the publicity of this regulatory legal act work[38], the presence of judicial practice, the actual performance experience of the mechanisms in the existing legislative norms, the provisions of the Bankruptcy Law were changed literally "incidentally"[39].

Thus, for the first reading was submitted the draft, which introduced minor changes to the Bankruptcy Law provisions, the essence of which was the appearance

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[35] List of instructions based on results of checking implementation of decisions of the head of state on shared construction participating citizens rights protection dated 08/03/2016 No. Pr-1520//URL: http://www.kremlin.ru/acts/assignments/orders/52653 (application date 26.03.2019).

[36] The Ministry of Construction of Russia has published plans and schedules for solving defrauded shareholders problems// URL: http://www.garant.ru/news/1138799; Housing building objects// URL: http://www.minstroyrf.ru/problem-objects; By the end of the year, the Russian Ministry of Construction will conduct an audit of all problematic shared-equity construction projects// URL: http://www.garant.ru/news/1143842 (application date 26.03.2019).

[37] Yaroshevskaya A.M. Problems of legal regulation of agreements for shared apartment buildings construction participation. P. 75.

[38] A permanent working group will be created in the State Duma to resolve issues of shared-equity construction//URL:http://www.duma-er.ru/news/v-gosdume-budet-sozdana-postoyannaya-rabochaya-gruppa-po-resheniyu-voprosov-dolevogo-stroitelstva (application date 28.06.2018).

[39] Slavich M.A. New bankruptcy rules for developers: content and prospects. Arbitration and civil process. 2019. № 10. P. 37-43.

in the developers' bankruptcy procedure the Fund for the shared construction participants rights protection (in fact, this Fund creation and the basis of its activities were provided for by the same draft)[40]. In this exact form that the bill draft received the State Duma relevant committees' conclusion and was enacted in the first reading on June 14, 2017. However, during public hearings of the project, in which regions representatives, developers, and shared construction participants took part, numerous changes were proposed, the current Law provisions were criticised, their reality misfits were noted, the mechanisms enshrined were inoperable in practice, and the inability to solve the main task of ensuring shared construction participants rights[41]. As a result, already two weeks after the hearings, the Government of the Russian Federation introduced amendments to the draft, which were prepared by the Ministry of Construction of Russia[42], including an extensive package of Bankruptcy Law changes; the draft was considered and enacted in the second and third readings on July 19 and 21, 2017, respectively.

Unfortunately, such legislator's move to amend the Bankruptcy Law § 7 Ch. IX provisions has not changed in the future. When, at the stage of the regulatory legal act draft elaboration, it did not contain any significant changes to the developers' bankruptcy legislation provisions, the main innovations were included as a whole package at the final readings practically.

The following changes that were made to the Bankruptcy Law provisions regarding the developers' bankruptcy in 2017–2020 should be noted. (their main part, the

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[40] Draft № 139186-7 of the Federal Law "On amendments to the Federal Law "On apartment buildings and other real estate shared construction participation and on amendments to certain legislative acts of the Russian Federation" and certain legislative acts of the Russian Federation"// URL: http://sozd.parlament.gov.ru/bill/139186-7 (application date 26.03.2019).

[41] Transcript of parliamentary hearings of the Committee on Natural Resources, Property and Land Relations on "Formation of effective legislative mechanisms for protecting the rights and legitimate interests of shared construction participants" topic// URL: http://komitet3-test.km.duma.gov.ru/upload/site49/document_news/002/723/068/Stenogramma_3.7.2017_PS_DOLSchIKI.pdf (application date 28.03.2018); Recomendations of parliamentary hearings: "Formation of effective legislative mechanisms for protecting the rights and legitimate interests of shared construction participants" 03.07.20017 // URL: http://komitet-1.test.km.duma.gov.ru/upload/site49/document_news/002/723/068/REKOMENDATsII.pdf (application date 26.03.2019).

[42] URL: http://static.government.ru/media/files/6ttxkyTBdPaXdiI8BzJzOVJjFGvCZoIy.pdf (application date 26.03.2019).

causes and consequences of their appearance will be discussed in detail in the following chapters).

1. Inclusion of the public-law company “Fund for the Shared Construction Participating Citizens Rights Protection” (hereinafter referred to as the Fund)[43] among the special participants in the case of developers’ bankruptcy.

Consolidating the need for the Fund's participation in cases of developers’ bankruptcy was justified and logical. The Fund creation and its legal status were provided for by the same Law of July 29, 2017 No. 218-FZ, therefor the legislator, acting consistently, included it among the developers’ bankruptcy case participants.

After the federal laws dated June 27, 2019 No. 151-FZ and dated July 13, 2020 No. 202-FZ enaction, the Fund’s role in the developer’s bankruptcy procedure significantly increased due to its rights expansion that determine its participation in special procedures (provided for in § 7 methods, the implementation of which ensures meeting the construction participants requirements), which made it practically one of the key participants in the matter.

2. Exclusion of legal entities from the number of privileged creditors (construction participants).

3. Establishment of additional requirements for a body who can be approved for the bankruptcy (external) manager position in the developer’s bankruptcy procedure.

4. Changes in the procedure for construction participants demands presentation.

According to the new edition of paragraph 3 of Art. 201.4 of the Bankruptcy Law provisions, the construction participants monetary claims and demands for the residential premises transfer (hereinafter referred to as the construction participants demands) are presented to the bankruptcy manager.

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[43] Federal Law of December 30, 2021 № 436-FZ “On Amendments to the Federal Law “On a Public Law Company for Protection of Shared Construction Participating Citizens Rights in Developers’ Insolvency (Bankruptcy) and on Amendments to Certain Legislative Acts of the Russian Federation” name of the Fund was changed to “public law company “Territory Development Fund”. The said Federal Law also provides for accession to the Fund of the state corporation “Fund for Assistance to Housing and Communal Services Reform” with its simultaneous transformation.

It is the bankruptcy manager, as a general rule, who considers the construction participants demand and makes a decision on including this claim in the register. Only in cases provided for by law, the construction participant claim is a subject to consideration by an arbitration court[44].

It seems that such radical innovations are aimed at reducing the burden on the judicial system, which, given the current trend towards an increase in the number and scale of bankrupt developers activities, is certainly experiencing serious inconveniences. Proponents of these changes also appeal to similar claims practices in bankruptcy cases of financial institutions. However, in the literature this innovation is fairly critically assessed[45].

Firstly, transferring all the work on considering the construction participants demands to the bankruptcy manager will require, given the established consideration deadlines, not only and not that much experience in the construction field but a huge staff of employees. Thereafter, the costs of the procedure will increase significantly, which will again “hit” the construction participants, since the funds to cover them will be drawn from the bankruptcy estate.

Secondly, it is difficult to imagine that the best bankruptcy manager with his team will be able to replace the judicial system and be more effective in considering the construction participants demands than an arbitration court.

5. Reducing the number of procedures that can be applied in a developer’s bankruptcy case.

When considering a developer’s bankruptcy case, supervision and financial recovery are not applied. If the applicant's claims are found to be justified, the arbitration court decides to declare the debtor bankrupt and to open bankruptcy proceedings. The transition to external management is possible only following the results of bankruptcy proceedings (Article 201.15-3 of the Bankruptcy Law).

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[44] Ulezko A. Bankruptcy of developers: new in legislation. EZh-Yurist. 2017. № 36. P. 2.
[45] Shashkov I.K. Legal regulation of developers. Global and Regional Research. 2020. № 3.. V. 2. P. 188.

This legislator's approach is explained in the literature by low rehabilitation procedures efficiency and productivity[46].

6. Expanding the objects' range in respect of which a construction participant receives a preferential right (in comparison with other creditors) to satisfy them.

The list of these objects was expanded due to including, in addition to residential premises, non-residential premises with an area not exceeding 7 square meters, and parking spaces[47].

We especially note the inclusion in § 7 of Bankruptcy Law Ch. IX the Art. 201.12-2, which regulates the satisfying procedure for the construction participants who deposited funds into the escrow account demands. Although this article inclusion in the Law is of a technical nature, its appearance was caused by significant changes in the shared participation construction legislation, based on the transition to payments through escrow accounts.

In the literature, it is almost a unanimous opinion that the mechanism, which has become widespread in foreign legal orders, in which the developer receives money from construction participants only upon the fact of putting the facility into operation, should have a positive impact on the state of the housing market[48]. Indeed, placing citizens' funds in bank accounts creates additional guarantees to satisfy their requirements for receiving invested funds back. Meanwhile, the positive effect of this innovation can only be fully assessed after a certain period. However, even at the initial stage of its implementation, it could be noted that its use will not become an absolute panacea in resolving issues of citizen participation in shared-equity construction, because:

it does not allow us to talk about the unconditional possibility of satisfying the citizens' demands to return their invested funds. Certainly, the legislation establishes special requirements for banks that can place funds in escrow accounts. They represent

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[46] Popondopulo V.F. Bankruptcy. Legal regulation. P. 197.

[47] Grebenkina I.A. Developer' bankruptcy: legislative innovations and construction project ownership recognizing problem. Laws of Russia: experience, analysis, practice. 2019. № 10. P. 68.

[48] Rukovichko K.A. Protection of shared construction participants property rights. Student science - look into future: materials of XV Russian stud. scientific conf. P. 131; Makhankov I.A. Peculiarities of legal regulation of developer bankruptcy in Russia. P. 89.

an additional guarantee of the financial stability for such credit institutions, although even here the financial difficulties cannot be completely excluded;

does not ensure the achievement of the main goal for citizens entering into legal relations within the framework for shared construction participation agreement, which is to obtain housing ownership;

does not provide for the possibility of losses compensation to citizens, including compensation under the norms of § 7 Ch. IX of the Bankruptcy Law (which is especially relevant in a sharp real estate prices increase, which occurred at the beginning of 2022 in connection with foreign policy events)[49].

Moreover, the provisions on escrow accounts settlements cannot exclude the developer's bankruptcy. Moreover this mechanism naturally undermined the financial stability of small developers who do not have the opportunity to finance construction on their own[50], including the costs of initial investments, and their presence in the vast majority is required for lending the developer on the project financing terms. The departure of "weak" participants from the market will, to a certain extent, increase the security of citizens investments who "work" with the construction market representatives that have retained their positions. However, it jeopardized projects previously started by small developers.

The long-discussed and implemented legislative initiative in the 2022 anti-crisis package on the possibility of the so-called phased disclosure of escrow accounts for developers causes special concerns. Today, the Government of the Russian Federation has been granted the right to make decisions allowing the specifics and grounds for transferring funds from shared construction participants to the developer for the construction (creation) of apartment buildings and (or) other real estate deposited in escrow accounts[51]. Obviously, this initiative is aimed at supporting the construction industry,

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[49] Pleshanova O.P. Impact of escrow accounts on developers' bankruptcy process. Bankruptcy mechanisms and their role in ensuring human well-beingResp. ed. S.A. Karelina, I.V. Frolov. Moscow, 2022. P.83-92.

[50] Shashkov I.K. Legal regulation of developers. P. 185–186.

[51] Subp. 7 clause 1 art. 18 of the Federal Law of March 8, 2022 № 46-FZ "On Amendments to Certain Legislative Acts of the Russian Federation".

which, under the falling sales due to rising mortgage rates and the unstable economic situation in general, is in dire need of working capital replenishment. However, there is also no doubt that securing the possibility of escrow accounts partial disclosure before a construction project commissioning will significantly reduce the guarantees for construction participants to return at least the invested funds and may neutralize the very idea of introducing this settlements mechanism under an equity participation agreement.

Thus, the creation of developers' bankruptcy legislation began in 2011 by the inclusion in Chapter. IX of the Bankruptcy Law § 7. Over the past years, its norms have undergone significant changes. In general, this legislation can be characterized as one with the most pronounced social orientation, as evidenced by the amendments made to expand the construction participating citizens' rights range, as well as increasing the number of "privileged" requirements (requirements for residential premises transfer, non-residential premises with an area of up to 7 sq. m inclusive, parking spaces); on strengthening the Fund's role in the developer's bankruptcy procedure[52].

§ 2. Developer's insolvency (bankruptcy): concept, signs, criteria

According to the Bankruptcy Law, the developer's insolvency (bankruptcy) has significant signs, § 7 of Law Chapter IX is devoted to its policy. However, considering developer's insolvency (bankruptcy) concept and signs, we believe it is advisable to move from the general to the specific, i.e., start with a general analysis of the concept and signs of insolvency (bankruptcy) as a whole.

First of all, it should be noted that with a significant number of scientific works devoted to the essence of the insolvency and bankruptcy categories, the question of the relationship between these concepts remains one of the most controversial to this day.[53]

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[52] See Slavich M.A. Legislation on insolvency (bankruptcy) of a developer: history of development and prospects. Business, Management and Law. 2021. № 3. P. 30-34.
[53] Insolvency (bankruptcy): ed. by S.A. Karelina. P. 52.

Some researchers propose to distinguish between bankruptcy and insolvency based on the debtor's wrongfulness criterion. Thereafter, cases where debtor's insolvency leads to misconduct against creditors' interests must be determined by the bankruptcy category. Situations in which debtor's actions do not contain criminal act signs are called insolvency, which relates to the private law institutions. G.F. Shershenevich an outstanding Russian scientist was the roponent of this approach[54]. Modern jurists share this point of view[55].

Another concept supporters, including I.V. Frolov, propose to differentiate the present concepts according to debtor's financial condition and the possibility of his further existence.[56] Therefore, they propose to understand insolvency as debtor's financial condition in which he is unable to fully and timely fulfill his obligations. In case when an insolvent debtor cannot restore his solvency, he should be considered bankrupt.

Interesting is the position of the scientists who, while analyzing the concepts of "insolvency" and "bankruptcy", conclude that the first is a stage, and the second is a process. Thus, they define insolvency as debtor's financial condition at a certain point in time[57]. Thereafter, the meaning of this word, in their opinion, has a static connotation. By the term "bankruptcy" they understand the procedure for liquidating an insolvent debtor. Therefore, taking into account the presence of a process, they see a dynamic component in the word "bankruptcy".[58]

Scientists from the fourth group equate the concepts of "insolvency" and "bankruptcy. This exact approach chose the legislator, using them as synonyms. So, by virtue of Art. 2 of the Bankruptcy Law, insolvency (bankruptcy) is recognized by an arbitra-

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[54] Ref. Shershenevich G. Competition law. Kazan, 1898. P. 473; Shershenevich G.F. Trade Law Course. Moscow, 1912. P. 151.

[55] Telyukina M.V. Relationship between concepts of "insolvency" and "bankruptcy" in pre-revolutionary and modern law. Lawer. 1997. № 12.

[56] Frolov I.V. Problems of pro-creditor and successor concept of modern Russian legislation on insolvency (bankruptcy). Business law. 2011. № 4. P. 20–25.

[57] Le Khoa. New law of the Russian Federation on insolvency (bankruptcy): the view of a foreign economist. Economics and life. 1998. № 11. P. 20.

[58] Mukhachev I.Yu. Pakharukov A.A. Concepts of insolvency and bankruptcy. Vestn. of Irkutsk State economy acad. 1999. № 3. P. 90.

tion court or resulted from citizen's extrajudicial bankruptcy procedure, debtor's inability to fully satisfy creditors' claims for monetary obligations, severance pay and (or) wages for those working or have worked under an employment contract, and (or) fulfill mandatory payments obligation.

To further analyze the insolvency (bankruptcy) signs, let us turn to the criteria by which it is determined, since these criteria are a measure by which the debtor's insolvency is verified[59].

World practice knows two criteria for insolvency: insolvency and non-payment. When using the insolvency criterion to declare a debtor bankrupt, the fact of the existence of a debt (the fact of the debtor's failure to pay the creditor's demands) is sufficient. The non-payment criterion implies that not just someone who does not pay debts to creditors, but someone who, in principle, cannot pay them, can be declared bankrupt[60]. At the same time, indigenous science has divided opinions. Some scientists talk about the superiority of the insolvency criterion[61], others - about the superiority of the non-payment criterion[62]. The legislator gives preference to the insolvency criterion and out these positions forms the concept of insolvency (bankruptcy) and identifies its characteristics (Articles 2 and 3 of the Bankruptcy Law).

However, it is customary to distinguish in the doctrine between legal features of insolvency (bankruptcy) (i.e., signs that can be derived from the legal definition of this concept), common features of legal entity and citizen bankruptcy, formulated in paragraph 2 of Art. 3 of the Law (i.e., features that determine the debtor's financial

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[59] Ref., for example: Belikh V.S., Dubinchin A.A., Skuratovskii M.L. Legal basis of insolvency (bankruptcy). Moscow, 2001., 2001. C. 27.

[60] Insolvency (bankruptcy): ed. by S.A. Karelina. V. 1. P. 86.

[61] Vitryanskii V.V. Ways to improve bankruptcy legislation. Vestn. Supreme Arbitration Court of the Russian Federation. 2001. № 3. P. 92–93; Kalinina Ye.V. Features of legislative development and improvement of insolvency (bankruptcy) procedure for legal entities. Lawer. 2002. № 5. P. 37; Popondopulo V.F. Bankruptcy. Legal regulation. P. 9–10; Telyukina M.V. Problems of determining signs of bankruptcy. Lawer. 1998. № 10. P. 15.

[62] Bai N.I., Melikhov N.V. On problems that arise when arbitration courts determine the signs of bankruptcy. Vestn. Supreme Arbitration Court of the Russian Federation. 2002. № 10. P. 114; Yudin V.G. Insolvency (bankruptcy): historical aspect. Vest. of the Supreme Arbitration Court of the Russian Federation. 2002. № 1. P. 158.

condition and the potential possibility of his bankruptcy), as well as the features necessary to initiate an insolvency (bankruptcy) for a legal entity and a citizen (i.e., the procedural conditions required to initiate bankruptcy proceedings in court)[63].

More "enlarged" approach distinguishes bankruptcy signs (legal and determining debtor's financial condition) and features necessary to pursue (initiate) a bankruptcy case[64]. Considering this approach, V.F. Popondopulo calls the features that make it possible to initiate an insolvency (bankruptcy) case external or obvious; features that must be established during the consideration of the case in order to declare the debtor bankrupt – essential [65].

Some scientists do not distinguish between the signs of insolvency (bankruptcy)[66]. However, a significant part of researchers speaks out for their separation with the identification of independent groups of signs[67].

Talking about various groups of characteristics and their relationship with each other, we should pay special attention to M.V. Telyukina's opinion, who also considers it necessary to differentiate the bankruptcy initiation features and bankruptcy features. However, she believes that the signs necessary to pursue (initiate) a bankruptcy case are a broader category, since they directly include signs of bankruptcy. Thus, she emphasizes that the Law does not include a minimum amount of debt as part of bankruptcy features. In addition, in her opinion, when deciding on the bankruptcy features, the grounds for the claims' emergence should not be considered. Therefore, it is possible to decide to declare the debtor bankrupt if there is a debt even for 100 rubles for financial sanctions payment[68].

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[63] Russian business law. Resp. ed. V.S. Belikh. Moscow, 2021. P. 231.
[64] Belikh V.S., Bogdanov V.M., Zaporoshchenko V.A. Citizen's bankruptcy (Criterion. Status. Procedure). Under general ed. V.S. Belikh. Moscow, 2017. P. 27.
[65] Popondopulo V.F. Bankruptcy. Legal regulation.P. 10.
[66] Insolvency (bankruptcy): ed. by S.A. Karelina. V. 1. P. 99; Yulova Yu.S. Legal regulation of insolvency (bankruptcy). Moscow, 2016. C. 330.
[67] Pakharukov A.A. Legal regulation of legal entities bankruptcy proceedings (issues of theory and practice), abst. dis. ...cand. of legal science. Moscow, 2003. P. 10–11.
[68] Telyukina M.V. Fundamentals of bankruptcy law. P. 37.

In turn, we share the position of scientists who distinguish between legal features and those that determine the debtor's financial condition, the potential possibility of bankruptcy (essential), as well as signs that make it possible to initiate a bankruptcy case (external, obvious).

The first bankruptcy sign is that a body has a debt nature monetary obligation. Indeed, from the direct content of the Bankruptcy Law provisions an unambiguous conclusion follows that the nature of the obligation to creditors is a qualifier when applying to the court to declare a debtor insolvent (bankrupt). Only the existence of monetary obligation can be the basis for filing a corresponding application in court, i.e. the debtor has an exclusive obligation to pay the creditor a specific amount of money.

The issue of non-monetary creditors' rights in general (irrespective of individual entities bankruptcy peculiarities) has been repeatedly discussed in the literature [69]. However, as for developer's bankruptcy, the question of rights scope of non-monetary creditors who have claim rights against the debtor developer to transfer ownership of the premises acquires special significance.

Due to the Law general provisions (we repeat), the institution of insolvency (bankruptcy) applies only to monetary debtors[70]. Therefore, before the bankruptcy proceedings introduction, a non-monetary creditor can protect his rights that have a non-monetary expression only in a general manner (in claim proceedings); to participate in the bankruptcy procedure, he must first transform his claims into monetary[71]. Within bankruptcy proceedings, the entire set of claims against the debtor is considered in the bankruptcy case. From the moment, the debtor is declared bankrupt and bankruptcy

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[69] Belikh V.S., Dubinchin A.A., Skuratovskii M.L. Legal basis of insolvency (bankruptcy). Moscow, 2001. P. 31; Karelina S.A., Erlikh M.E. Non-monetary creditors rights to participate in debtor's insolvency (bankruptcy) process. Business Law. 2007. № 3. P. 3; Lomidze O., Lomidze E. Problems of creditor under non-monetary obligation rights protection in debtor organization bankruptcy. Economics and Law. 2001. № 3. P. 107–114.

[70] Insolvency (bankruptcy): ed. by S.A. Karelina. V.1. P.283; Zaporoshchenko V. Features of protecting construction participants rights in developers' bankruptcy. Business, management and law. 2017. № 3–4. P. 74.

[71] Shishmareva T.P. On converting non-monetary claims into monetary ones in insolvency (bankruptcy) procedures. Arbitration and civil process. 2009. № 5. P. 34; Novoselova L.A. On legal consequences of violating a monetary obligation. Vestn. of Supreme Arbitration Court of the Russian Federation. 1999. № 1. P. 85.

proceedings against him, the creditors' claims for non-monetary obligations of a property nature are transformed into monetary ones[72].

When applying special rules to debtor's bankruptcy procedure of a § 7 Ch. IX of the Bankruptcy Law, creditors who are construction participants have the right to have a non-monetary claim of a property nature against the debtor in the form of a the real estate transfer demand, which is an exception to the general rule of the Bankruptcy Law itself [73]. Moreover, the main purpose of applying § 7 provisions - maximum bodies' who have invested their money to obtain housing ownership rights protection - has served to formulate in law enforcement practice the conclusion that construction participants are free in their right to choose the method of protection at the stage of including their claim in the creditors' claims register. They can declare in bankruptcy proceedings a demand for the premises ownership transfer, even if at this moment they actually have a monetary claim against the debtor in connection with the refusal to fulfill the contract or termination of the contract in court. Likewise, a construction participant, by virtue of the provisions of Part 1 of Art. 201.5 of the Law, in the claims amount establishing process, may declare his refusal to fulfill the contract with the developer.

The following should be noted here. While enacting the Resolution of the Presidium of the Supreme Arbitration Court of the Russian Federation dated April 23, 2013 No. 13239/12, which reflected this legal position, the version of the Bankruptcy Law was in force, according to which the monetary claims of construction participants were taken into account as part of the creditors' register, requirements for the transfer of residential premises were subject to inclusion in register of requirements for the residential premises transfer. Therefore, the Presidium pointed out that the inclusion of any of these requirements in the register pursues "the same material and legal interest of construction participants - obtaining coherent, proportional satisfaction of the re-

[72] Point 34 of of the Plenum of the Supreme Court of the Russian Federation Resolution dated 22.06.2012 № 35"On some procedural issues related to the consideration of bankruptcy cases"
[73] Pivtsaev Ye.V. Features of developers' insolvency (bankruptcy), dis. ...cand. of legal science. St. Petersburg, 2017. P. 39.

quirements, including through the transfer of an unfinished construction project or residential premises."[74] Following the same logic, the legislator, when amending the provisions of § 7, excluded the maintenance of a double register of creditors' claims in developer's bankruptcy, which was justifiably criticized in the literature[75], stipulating that all claims of construction participants are entered into the register of their claims, which is part of the creditors' claims register (p 3, Article 201.4, Article 201.7 of the Bankruptcy Law).

Thus, unlike creditors of ordinary debtors, construction participants in the developer's bankruptcy case, even by virtue of the Bankruptcy Law previous version norms, which provided for the possibility of introducing a monitoring procedure in relation to the developer, were freed from the need to transform their non-monetary claims into cash equivalent for participation in a bankruptcy case at the stages before bankruptcy proceedings. Likewise, the right to choose the form of claim recording is retained by the construction participant at the stage of bankruptcy proceedings.

Let us make a reservation that construction participants have the right to exercise these exclusive from the bankruptcy rights general rules point of view only if the court applies the rules of § 7 (clause 3 of Article 201.1) within the framework of the relevant debtor's bankruptcy case. This is due to the fact that the mere existence of the debtor's creditor's right to demand the premises transfer on the basis of an agreement concluded with him without recognizing him as developer will not allow such a creditor to take advantage of the privilege of choosing a form for recording his claim in the debtor's creditors register.[76] If a court decides to apply the § 7 of the Bankruptcy Law provisions to the debtor, construction participants have the right to submit non-monetary claims to the creditors' register.

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[74] The Supreme Arbitration Court of the Russian Federation Presidium Resolution dated 24.04.2013 № 13239/12.

[75] Markov P.A., Barkova L.A. Features of maintaining creditors' claims double register in developers' bankruptcy. Vestn. of arbitration practice. 2015. № 5 (60). P. 4–11.

[76] Balzhinimaeva Zh.Ts., Korshunov P.N. Some issues of bankruptcy cases consideration in federal law's special norms application of the "On Insolvency (Bankruptcy)". The Power of the Law. 2011. № 1 (5). P. 20.

Meanwhile, we cannot deny the fact that a construction participant right, unconditionally recognized by the legislator, to protect his rights by presenting a non-monetary claim against the debtor does not correspond to the presence of his right to declare the debtor insolvent (bankrupt) and does not allow expanding the content of the current feature (the presence of a debt obligation) even in the case of developer's insolvency (bankruptcy). It seems that the absence of such special rules within developer's bankruptcy cannot be justified.

By virtue of Art. 2, art. 3, art. 4, art. 7 of the Bankruptcy Law, a creditor who has a monetary claim against a debtor has the right to go to court. § 7 does not contain exceptions allowing the possibility of creditors for non-monetary obligations, the deadline for fulfillment of which has been violated, to apply to the arbitration court with a corresponding application. To be more precise, exceptions to the general provisions of Art. 7 of the Bankruptcy Law provides, however, even today the right of non-monetary creditors who want to obtain ownership of the corresponding premises to apply to the court to declare the debtor bankrupt is still limited.

It follows from the above that with all the changes made to the provisions of § 7 of the Law, the legislator adheres to the general rule, according to which creditors with monetary claims have the right to file a statement of developer's insolvency in the arbitration court. This conclusion was clearly formulated by the law enforcer[77].

The doctrine analyzed the issue of the inadmissibility of limiting the non-monetary creditors right to initiate bankruptcy proceedings [78], while noting that in order to exercise this right, such creditors first need to convert their non-monetary obligations into a monetary equivalent.[79] Certainly, the monetary nature of the claims against the debtor is determined by the goals and objectives of bankruptcy procedures, as well as the mechanisms for achieving them provided by law, which are aimed at satisfying

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[77] Resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation dated December 15, 2004 № 29 "On some issues of the Federal Law "On Insolvency (Bankruptcy)"

[78] Karelina S.A., Erlikh M.E. Non-monetary creditors rights to participate in debtor's insolvency (bankruptcy) process. P. 3; Shishmareva T.P. On converting non-monetary claims into monetary ones in insolvency (bankruptcy) procedures. Arbitration and civil process. P. 34.

[79] Belikh V.S., Bogdanov V.M., Zaporoshchenko V.A. Citizen's bankruptcy (Criterion. Status. Procedure). P. 12.

creditors' claims, as a general rule, in monetary form. To these exact arguments the Constitutional Court of the Russian Federation appealed when considering the complaint of A.V. Emelyanova. According to the applicant, the Law provisions, which he disputes, in the part in which they limit the right to apply to an arbitration court with an application for declaring a debtor bankrupt by the presence of monetary claims against the debtor, do not allow bodies who have a non-monetary claim, a demand for residential premises transfer in particular, to make this application, contradict the Constitution of the Russian Federation. Refusing to accept the complaint for consideration, the Constitutional Court indicated that the presence in the Bankruptcy Law of special rules § 7 Ch. IX, in particular on granting construction participants the right to present to the developer, within the framework of an initiated bankruptcy case, a demand for the residential premises transfer, are aimed at providing them with additional guarantees, at exercising the rights enshrined in Art. 40 of the Russian Constitution. At the same time, the provisions established by the Law that set legal entity bankruptcy signs, the composition and amount of obligations taken into account to determine the presence of insolvency signs, the moment of the emergence of the right to apply to an arbitration court with an application to declare the debtor bankrupt, the conditions for the court to accept such statements cannot be considered as violating the constitutional rights of the applicant[80].

It is difficult to argue with the stated position of the Constitutional Court of the Russian Federation. Indeed, the legislator, taking into account the bankruptcy legislation principles established by him, is free to establish signs, the totality of which allows certain bodies to initiate bankruptcy proceedings for the debtor. However, the absence of an exception for developer's bankruptcy, as rightly noted in the literature, granting the right to go to court exclusively to the Fund and bankruptcy creditors does not meet the purposes of applying § 7. The Fund activities analysis, which should play a special role within the framework of developer's bankruptcy procedure, today does not allow

[80] Constitutional Court of the Russian Federation ruling dated March 29, 2016 No. 529-O "On refusal to accept for consideration complaint of citizen Alexey Vyacheslavovich Emelyanov about his constitutional rights violation by paragraph 2 of Article 3, paragraph 2 of Article 4, paragraph 2 of Article 7 and paragraph 2 of Article 33 of the Federal Law "On Insolvency (Bankruptcy)"

us to draw a conclusion about its unconditional activities effectiveness as a body who, through the granted rights implementation, must ensure maximum protection for construction participants, including the pursuing stage (initiation) of bankruptcy cases[81]. In turn, bankruptcy creditors are not interested in introducing bankruptcy proceedings against the developer because their claims will be satisfied only in the fourth place [82].

Of course, it cannot be said that construction participants are deprived of the opportunity to file an application for declaring the developer bankrupt; however, in order to exercise such a right, they will first need to transform it into a monetary one. To do this, they must declare their refusal to fulfill the agreement for shared construction participation, i.e., they must use the granted by law right to implement the corresponding measure of protection.[83] In other words, although construction participants are free to choose the form in which they protect their material and legal interests within the bankruptcy procedure framework, the limitation of them in choosing the method of protecting their rights at the stage of bankruptcy proceedings initiating (applying to the arbitration court with a corresponding application) cannot be considered fully justified.

Taking into account the above, it seems reasonable to supplement the provisions of Art. 201.1 of the Bankruptcy Law with a norm that will grant the right to apply to an arbitration court with a claim to declare the developer bankrupt to a construction participant to whom the developer has not fulfilled the obligation to transfer residential premises ownership, parking spaces, or non-residential premises[84].

According to the provisions of the current legislation, there are no exceptions for construction participants who have a non-monetary claim against the developer. Meanwhile, in case of developer's bankruptcy, the rule that he must have a monetary obligation of a debt nature is not unconditional.

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[81] Yulova Ye.S. New legislation on developers' bankruptcy in creation of the Fund for construction participating citizens rights protection. Liberal democratic values. 2018. V. 2. № 3–4. P. 5–6.

[82] Barabina M.P. Legal regulation of developers' insolvency (bankruptcy): dis. ...cand. of legal science. Ulyanovsk, 2019. P. 15.

[83] Durnov A.S. Correlation of protective measures and measures of civil liability under apartment buildings shared construction participation agreement. Ros. scientific magazine. 2010. № 2 (15). P. 258.

[84] See Slavich M.A. Developer as a subject of insolvency (bankruptcy). Business, Management and Law. 2019. № 3. P. 72.

Thus, paragraph 2.6 of Art. 201.1 of the Bankruptcy Law includes that the Fund, the Moscow government body specified in Art. 4 of the Law of the Russian Federation of April 15, 1993 No. 4802-1 “On the status of the capital of the Russian Federation” can apply to the court to declare the developer bankrupt including cases where they are not developer’s creditors. When considering the submitted application validity, the court must have evidence of the presence of developer’s property insolvency and (or) insufficiency features, prescribed by the Bankruptcy Law. Thus, formally, the Fund (a government body in Moscow) may not have any claims against the developer, but is endowed with special legal capacity to initiate insolvency proceedings for the developer. Therefore, if the Fund (the government body of Moscow) applies to the arbitration court to declare the developer insolvent (bankrupt), the presence of a monetary obligation of a debt nature on the developer is not a mandatory feature.

Returning to the analysis of the debtor's insolvency criteria, it is necessary to note the following. We believe that in relation to the debtor, to whose bankruptcy the provisions of § 7 Ch. IX of the Bankruptcy Law should be applied, the legislator deviates from the adopted insolvency criterion and applies the criterion of non-payment.

Firstly, by virtue of the provisions of the Bankruptcy Law clause 2.7 of Art. 201.1. monitoring and financial recovery procedures when considering a developer’s bankruptcy case do not apply. In other words, the legislator not only does not pursue the goal of restoring the debtor’s solvency, but as a general rule, does not even assume the existence of such a possibility (a priori, he considers the debtor-developer to be insolvent, basically unable to pay). Therefore, it prescribes the mandatory introduction of bankruptcy proceedings based on the results of consideration of the insolvent (bankrupt) recognition application validity.

Secondly, by virtue of the provisions of clause 2.6 of Art. 201.1 of the Bankruptcy Law, when applying to the court to declare a developer insolvent (bankrupt) of such a special entity as the Fund (or an authorized government body of Moscow), the provided evidence of the developer’s signs of insolvency and (or) insufficiency of property set by the Insolvency (Bankruptcy) Law are taken into account.

The legal definition of the insolvency concept is contained in Art. 2 of the Bankruptcy Law, according to which insolvency is the termination of the debtor's fulfillment of part of the monetary obligations or obligations to pay mandatory payments caused by insufficient funds. It is obvious that the legislative definition of insolvency as the inability to pay a debt in a specific period coincides with the content of this concept accepted in science.

There is no definition of the non-payment concept in the legislation. However, Art. 2 of the Bankruptcy Law reveals the content of insufficient property concept: as an excess of the amount of monetary obligations and obligations to pay obligatory payments of the debtor over the value of his property (assets). Thereafter, when the debtor, taking into account all his property (assets), is unable to fulfill the monetary obligations he has assumed and the obligations to pay obligatory payments, there is not just insolvency, but insufficiency of the debtor's property. From doctrine's point of view, such property insufficiency, i.e., basically inability to pay, indicates that the debtor meets the criterion of non-payment.

Thus, when establishing developer's bankruptcy signs, the legislator actually proposes to be guided by the criterion of non-payment.

At the same time, the wording chosen by the legislator ("the evidence presented... the presence of developer's property insolvency and (or) insufficiency signs is taken into account") allows us to conclude that in order to declare the developer bankrupt (open bankruptcy proceedings), the simultaneous presence of property insolvency and insufficiency signs are not required. These features are provided as alternatives. That is, the developer can be declared bankrupt if he has signs of both insolvency (common to all categories of debtors) and signs of insufficient property. Of course, a debtor who has signs of insufficient property is insolvent. However, taking into account the presence of a monetary obligation feature, formally the debtor-developer may not have an overdue monetary obligation, but signs of insufficient property to satisfy the claims of creditors can be established towards him. Therefore, it seems that although in the legal

definition of insufficiency the volume of property (assets) of the debtor correlates exclusively with his monetary obligations and obligations to pay mandatory payments, in relation to the developer's insolvency (bankruptcy), a broad interpretation of this concept will be justified. Application of the provisions of § 7 ch. IX of the Bankruptcy Law aims to provide shared construction participating citizens with additional guarantees to protect their rights and interests. Therefore, when assessing the insufficiency of a developer's property, his existing property (assets) must be correlated not only with monetary obligations (including mandatory payments), but with non-monetary obligations (obligations to transfer shared construction objects ownership to construction participants).

Thereafter, in order to declare a developer bankrupt (establish signs of bankruptcy), it is sufficient to establish the insufficiency of his property to satisfy all the obligations he has assumed, including those of a non-monetary nature. In this regard, the presence of a monetary obligation of a debt nature is not always a mandatory sign of developer's bankruptcy.

The second sign arising from paragraph 2 of Art. 3, art. 6 of the Bankruptcy Law is the presence of a minimum amount of debt, the payment obligations of which are not fulfilled within three months. In other words, this attribute is mandatory for all categories of debtors whose bankruptcy is carried out according to general rules.

By virtue of paragraph 2 of Art. 6 of the Law, bankruptcy proceedings may be initiated by an arbitration court, as long as the total claims against the debtor-legal entity amount to at least 300 thousand rubles. According to paragraph 2 of Art. 3 of the Law, a legal entity is considered unable to satisfy creditors' claims if the corresponding obligations and (or) responsibilities are not fulfilled within three months from the date on which they should have been fulfilled.

The question of this insolvency (bankruptcy) sign validity, as well as the establishment of the minimum debt amount by the legislator, is debatable. For example, K.B. Koraev notes that a debtor who cannot repay one-kopeck debt will never be able to repay a much more significant amount, therefore establishing a minimum amount of

debt as a sign of insolvency (bankruptcy) makes no sense[85]. In return, V.V. Vitryansky, on the contrary, emphasizes that the establishment of the minimum debt amount and the period for its fulfillment was intended to increase the level of contractual discipline. However, given the specifics of the Russian market, the presence of a debt in the amount of 300 thousand rubles, which is not fulfilled within three months, is not actually something unacceptable. In this regard, it is necessary to increase both the minimum amount of debt and the period of permissible overdue[86].

It seems that experts' opinion who speak for increasing the debt amount, the presence of which may indicate the insolvency of the corresponding debtor, is quite fair, and here's why. The Bankruptcy Law does not contain provisions on the minimum debt amount and the period of its non-fulfillment in relation to the debtor, to whose bankruptcy the provisions of § 7 are applied[87]. However, similar exceptions are specified for other categories of debtors, whose bankruptcy is carried out according to special rules. For example, taking into account the need to ensure state's defense capability, as well as the economic importance for other market participants[88] in relation to strategic enterprises and organizations, as well as natural monopolies, an increased minimum debt amount was established - 1 million rubles. (clause 4 of article 190, clause 3 of article 197 of the Law).

In relation to developer's bankruptcy, taking into account the social significance of the bankruptcy procedure, increasing the minimum debt amount will also be justified. The main purpose of applying the provisions of § 7 ch. IX of the Bankruptcy Law is to protect the rights of citizens to receive housing ownership, therefore, as a qualifying factor, we propose to consider the debt amount of the developer to citizens who have not received the obligations to transfer residential premises ownership fulfillment. Taking into account the objective average cost of a square meter of housing, we believe it is

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[85] Koraev K.B. On issue of relationship between categories "insolvency" and "inconsistency". Lawyer. 2014. № 4.
[86] Vitryanskii V.V. Ways to improve bankruptcy legislation. P. 93.
[87] Gorb Ye.E. Procedures peculiarities in developers' bankruptcy. Arbitration manager. 2015. № 1. P. 18.
[88] Insolvency (bankruptcy). Karelina S.A. V. 2. P. 218.

advisable, in relation to bankruptcy procedures for a developer, to set the minimum debt amount at least 1 million rubles.

This amount may become a barrier to the creditor using the right to apply to the arbitration court with a statement developer's insolvency (bankruptcy) as a mechanism for satisfying its claims.

The literature also expresses the opinion that the non-fulfillment period of developer's obligations should be increased to six months from the date when they should have been fulfilled[89].

Since the Russian Federation current legislation does not contain exceptions for creditors filing an application to declare a developer insolvent (bankrupt) in terms of the minimum debt amount and the period during which the obligation to pay such debt is not fulfilled, the minimum debt amount is common to all debtors in the amount of 300 thousand rubles, the payment obligations of which were not fulfilled within three months, should be considered a mandatory sign of developer's bankruptcy initiation. However, these rules (as in the case of "the presence of a monetary obligation of a debt nature") do not apply if developer's bankruptcy is initiated by the Fund or a government authority of Moscow. Consequently, the sign under consideration is not always mandatory for declaring developer's bankruptcy.

This conclusion follows from the already discussed Bankruptcy Law clause 2.6 of Art. 201.1 provisions, about the need to check for signs of developer's property insolvency and (or) insufficiency when considering the Fund's application. Though not extensive, but already existing practice of applying this rule allows us to say that arbitration courts for the most part establish the presence of both grounds for declaring a developer bankrupt and introducing bankruptcy proceedings against him, i.e. monetary obligation in the amount of at least 300 thousand rubles, which is not fulfilled within three months, and insufficient property[90]. If only signs of insolvency are established

[89] Strizhkina D.A. Problematic aspects of participants in developers' insolvency (bankruptcy) procedure. Academic journalism. 2021. № 7. P. 153.

[90] Ref. for example: Resolution of the Arbitration Court of the Ural District dated 11.10.2021 № F09-7363/21, Resolution of the Arbitration Court of the Far Eastern District dated 03.11.2020 № F03-4263/2020, Resolution of the Arbitration Court of the North-Western District dated 07.10.2020 on

and in the absence of evidence that the developer's property is insufficient to repay the debt, the courts justifiably refuse to satisfy the Fund's application to declare the developer insolvent (bankrupt).[91]

It seems that the developer's debt for 300 thousand rubles, the payment obligation for which has not been fulfilled within three months, is not the main, but an optional feature. The bankruptcy procedure for a developer is of great social importance; in case of bankruptcy, monitoring and financial recovery procedures are not applied; the construction of a residential building is quite expensive, i.e. the amount of the developer's obligations is significant (even in relation to each individual creditor). Considering all this, it seems unacceptable to declare the developer bankrupt and open bankruptcy proceedings against him if the court at the time of making such a decision did not establish the insufficiency of his property. Moreover, the legislator already allows for the possibility of the absence of this characteristic, which is obligatory as a general rule, if the Fund or a government body in Moscow applies to declare the developer insolvent (bankrupt). At the same time, if it is established that the developer's property is insufficient to satisfy his obligations, including non-monetary obligations, to construction participants, the courts should not refuse to declare him bankrupt.

Thus, within developer's bankruptcy it is advisable to be guided not by the main criterion of insolvency, elected by the legislator, but by the criterion of non-payment.

Another sign of bankruptcy is the formal establishment of creditors' claims.

In accordance with Bankruptcy Law paragraph 2 of Art. 7 provisions, the right to apply to an arbitration court arises for the relevant body from court's decision legal force entry date, arbitration court or judicial act on the issuance of execution writs for the forced execution of arbitration court decisions to collect funds from the debtor. The creditors' claims made within the framework of a bankruptcy case must also be confirmed in court (by a ruling to include them in the register), until they are established

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case № A05-12075/2019, Resolution of the Arbitration Court of Moscow District dated 24.01.2019 on case № A41-44405/18 and Resolution of the Arbitration Court of Moscow District dated 27.12.2018 on case № A41-44410/18.

[91] Resolution of the Arbitration Court of the Far Eastern District dated 01.11.2019 № F03-5198/2019.

by the court it cannot be reliably stated that the corresponding body is a debtor's creditor.[92]

Let us note that in the literature these provisions of the Law cause justified criticism. V.F. Popondopulo notes that this provision strengthens the continuation nature of the Bankruptcy Law, while not excluding possible abuses on the part of creditors (which was the original purpose of its introduction)[93]. However, in relation to developer's bankruptcy, the noted drawback was overcome by introducing into Chapter. IX Law § 7. By virtue of the already discussed provisions of paragraph 2.6 of Art. 201.1 in cases where the Fund (the government body of Moscow) applies to the arbitration court, it is not required to provide a court decision that has entered into legal force on debt collection from the developer in favor of the Fund or any other creditors.

In other words, the sign of formal establishment of creditors' claims is mandatory if a creditor applies for declaring the developer insolvent (bankrupt), and is not one of those in the case when the Fund (the government body of Moscow) applies with the corresponding application.

Therefore the procedural features (procedural and legal conditions) necessary to pursue (initiate) a bankruptcy case are the presence of such a right (subject to the conditions set in Article 7 of the Bankruptcy Law)[94], by the body filing an application to the court to declare the debtor insolvent (bankrupt), compliance of this application with the law requirements in form and content.[95] These features are equally required when initiating a developer's bankruptcy case.

Official recognition of a body's insolvency by an arbitration court is also a common feature for all categories of debtors. Taking into account the Bankruptcy Law provisions on the possible procedure for extrajudicial citizens' bankruptcy, this sign means extrajudicial citizen's bankruptcy procedure completion. However, despite the fact that

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[92] Determination of the Supreme Arbitration Court of the Russian Federation dated 07.03.2014 № VAS-2157/14 on case № A47-283/2013.
[93] Popondopulo V.F. Bankruptcy. Legal regulation. P. 23.
[94] Bankruptcy proceedings. Ed. by V. V. Yarkova. SPb.: SPbSU Publishing House, 2006. P. 106–110.
[95] Belikh V.S., Bogdanov V.M., Zaporoshchenko V.A. Citizen's bankruptcy (Criterion. Status. Procedure) under general ed. V.S. Belikh. Moscow. P. 36.

citizens' bankruptcy does not exclude the application of the provisions of § 7 Ch. IX of the Law (clause 1 of Article 213.1), if the debtor is classified as a developer, it is not possible for him to go bankrupt out of court. Therefore, in relation to a developer, we can only talk about a sign of official recognition of his insolvency by an arbitration court. Moreover, although the literature has expressed an opinion about the formal (not substantive) nature of this feature[96], it is difficult to argue with the fact that for the legal registration of insolvency, the transformation of insolvency into inconsistency, official recognition of the latter in court is required.

In case of debtors to whom the special provisions of § 7 Ch. IX of the Bankruptcy Law bankruptcy, the considered signs are exhaustive. However, developer's bankruptcy also has other, peculiar characteristics.

Thus, the application of the provisions of § 7 ch. IX of the Bankruptcy Law and, accordingly, establishing developer's bankruptcy signs when considering the validity of an application for declaring the debtor insolvent (bankrupt) by an arbitration court is possible only if he has information that the debtor belongs to the category of developers (in otherwise, the case will be considered in the general manner). In the case when the Fund (the government body of Moscow) applies with an application, it must, in order to prove the existence of a special right, submit to the arbitration court evidence that the debtor belongs to a special category of entities. The Bankruptcy Law also imposes on other bodies (debtor, creditors) the obligation to indicate the relevant information in the application (clause 3 of Article 201.1 of the Bankruptcy Law). Since in the absence of this information it is impossible to talk about a developer's bankruptcy, the indicated sign must be recognized as mandatory for pursuing (initiating) developer's bankruptcy.

If, when filing an application for creditor's insolvency (bankruptcy), it is sufficient to have information that the debtor is a developer, then while considering the submitted application validity, it is necessary to establish whether the debtor is a developer for the purposes of applying the special provisions of the Law on bankruptcy.

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[96] Insolvency (bankruptcy). Karelina S.A. V. 1. P. 114.

That is, in general terms, we can say that in case of developer's insolvency (bankruptcy), signs indicating that the debtor corresponds to the concept of a developer are mandatory (they are discussed in more detail in Chapter Two).

The analysis allowed us to draw the following conclusions:

1) the list of developer's bankruptcy signs is not identical to the list of bankruptcy signs identified in the doctrine as a whole;

2) the lists of developers' bankruptcy signs are different depending on which of the bodies entitled to apply to the court for the developer's insolvency (bankruptcy) initiates this case;

3) developer's bankruptcy has special characteristics, the presence of which is a prerequisite for the application the special provisions of § 7 of Chapter. IX of the Bankruptcy Law in a bankruptcy case[97].

[97] See Slavich M.A. Insolvency (bankruptcy) of a developer: definition criteria and signs. Lawyer. 2023. № 2. P. 49-55.

CHAPTER 2. SUBJECTIVE COMPOSITION OF CASES ABOUT DEVELOPER'S INSOLVENCY (BANKRUPTCY)

§ 1. General characteristics of the cases' subject matter about developer's insolvency (bankruptcy)

Consideration of developers' insolvency (bankruptcy) cases due to a special debtor category is regulated by special rules and has its own specifics. Developers' bankruptcy cases' subject matter also significantly differs from the standard composition of bodies participating in an insolvency (bankruptcy) case, and is essentially unique[98].

Set of bankruptcy case participants against a developer can be divided into two main groups. The first consists of bankruptcy case subjects, regardless of the debtor category against whom the case was initiated (general composition). The second includes bodies who are included in the number of participants by special rules of § 7 Ch. IX of the Bankruptcy Law (additional category) [99].

In the Bankruptcy Law, general entities are designated as:

1) bodies participating in a bankruptcy case (art. 34);

2) bodies participating in bankruptcy arbitration proceedings (art. 35).

Among the first, the Law includes the debtor, the arbitration manager, bankruptcy creditors, authorized bodies, federal executive bodies, as well as executive bodies of the Russian Federation constituent entities and local government bodies depending on debtor's location in cases set by the Insolvency Law, a body who provided security for debtor financial recovery.

The latter includes debtor's employees representative, debtor-unitary enterprise property owner representative, debtor founders (participants) representative, creditors meeting or creditors committee representative, federal executive body representative

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[98] Makhankov I.A. Peculiarities of legal regulation of developer bankruptcy in Russia. P. 84.

[99] Karelina S.A., Frolov I.V. Developer's bankruptcy. Theory and practice of law enforcement. Moscow, 2018. P. 49, 50.

in the field of security if the authority execution of the arbitration manager is associated with state secret information access, as well as the executive authorities of the Russian Federation constituent entities and local self-government bodies authorized to represent in the procedures applied in bankruptcy cases the interests of the Russian Federation constituent entities, municipalities location of the debtor, self-regulatory organization of arbitration managers, control (supervision) body (Rosreestr), creditors for current payments, other bodies, in cases set by the Arbitration Procedure Code of the Russian Federation, the Bankruptcy Law.

At the same time, Supreme Arbitration Court Plenum of the Russian Federation indicated that such other bodies include the other transaction party or another body in respect of whom the transaction was made (clause 4 of Article 61.8 of the Bankruptcy Law), controlling debtor's bodies when they are held liable (clause 7 Article 10 of the Law). The Plenum divided the entire set of participants in bankruptcy proceedings into the main bodies participating in the bankruptcy case, as well as participants in separate disputes. By virtue of the legal position, which was once expressed by the Supreme Arbitration Court of the Russian Federation, the main participants include both bodies participating in the bankruptcy case (debtor, arbitration manager) and bodies participating in the arbitration process (representative of the meeting (committee) of creditors (if the court has information about his election), debtor-unitary enterprise property owner representative or debtor's founders (participants) representative)[100].

In the doctrine, of bankruptcy cases subjects, individual participants (in particular, creditors) are classified on various grounds [101], but these issues are not included in

[100] Paragraph 14, 15 Resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation dated 22.06.2012 № 35 "On some procedural issues related to the consideration of bankruptcy cases".

[101] Vershinin A.P. Rights of creditors in debtor's bankruptcy. Commentary on the Law "On Insolvency (Bankruptcy)". SPb., 1998. P. 59; Pustovalova Ye.Yu. Sudba trebovanii kreditorov pri bankrotstve dolzhnika [Creditors' claims fate in debtor's bankruptcy]. Moscow, 2003. C. 8; Yenkova Ye.E. Problems of legal regulation of insolvency (bankruptcy), dis. ...cand. of legal science. Moscow. 1999. P. 78; Makhneva Ye.A. Development of civil legal relations in bankruptcy procedures. Abst. dis. ...cand. of legal science. Moscow, 2003. C. 16; Valuiskii A.V. Problems of satisfying creditors' claims under insolvency (bankruptcy) legislation of Russia and foreign countries. Dis. ...cand. of legal science. Saratov, 2002. P. 59; Telyukina M.V. Bankruptcy law: theory and practice of insolvency

the subject of this study. Therefore, we will consider only groups of special entities that participate in developer's bankruptcy case.

Art. 201.2 of the Bankruptcy Law provides that, along with the bodies specified in Art. 34 of the Law, bodies participating in developer's bankruptcy case are recognized the following:

construction participants who have residential premises transfer requirements, requirements for the transfer of parking spaces and non-residential premises;

an authorized executive body of a constituent entity of the Russian Federation exercising control and supervision in shared-equity construction of apartment buildings and (or) other real estate in the territory of this construction;

public law company "Territory Development Fund" (Fund)[102].

Meanwhile, the analysis of the provisions of § 7 and legislator's logic, enshrined in Art. 34–35 of the Law, allows us to conclude that such bodies also include:

constituent entity fund of the Russian Federation (clause 1 of article 201.15-1);

a legal entity that meets the requirements for a developer in accordance with Federal Law No. 214-FZ, which is the acquirer of the rights and obligations of the developer (clause 1 of Article 201.15-1);

a legal entity that has the right to carry out engineering surveys, prepare design documentation, construction, reconstruction, major repairs of capital construction projects in accordance with the Town Planning Code of the Russian Federation and complying with the requirements for procurement participants in accordance with Art. 31 Federal Law of 04/05/2013 No. 44-FZ "On the contract system in the field of procurement of goods, works, services for state and municipal needs provision" (clause 2 of article 201.15-2-1);

a government body of Moscow empowered to apply to the arbitration court to recognize the developer as bancrupt (Clause 2.6 of Article 201.1).

(bankruptcy). Moscow, 2002. P. 156; Lomidze O., Lomidze E. Problems of creditor under non-monetary obligation rights protection in debtor organization bankruptcy. P. 107–114.

[102] Ref.: Dementev V.V. Bankruptcy of a developer: features and consequences. Current issues of law, economics and management. Collection of art. XI Internat. scient.-pract. conf.: in 3 p. Penza: Science and Education, 2017. P. 306–307.

It should be noted here that in the doctrine the legislative classification of bankruptcy cases subjects has received an ambiguous assessment. Some authors consider it logical and reasonable [103], others criticize it[104]. At the same time, its consoludation in the Bankruptcy Law suggests that in the developer's bankruptcy cases framework a separate group of special named entities is distinguished.

In addition, science distinguishes a group of so-called bankruptcy legal relations collective subjects - this is a meeting of creditors, a committee of creditors[105]. Despite all the ambiguity of the legal nature of these entities, which are considered special subjects of bankruptcy law [106], collective quasi-subjects [107], in a case of developer's bankruptcy, the Law supplements their number with a meeting of construction participants (Article 201.12). We believe, however, that those scientists are right who do not classify these collections as special kind compounds and do not consider them competition law subjects[108]. According to the point of view expressed by G.F. Shershenevich, participants in such meetings and committees are united exclusively formally; due to the common interest in satisfying their demands, they remain separated, new legal relations are not created[109]. The decisions of the meeting or the creditors committee do not express their unified will; in fact, creditors will is formed on the principle of coercion of the minority by the majority due to the conflict of interests of bodies participating in the meetings[110].

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[103] Shemeneva O.N. Confessions and agreements on civil proceedings circumstances. Moscow, 2013. P. 184; Kuznetsov S.A. The main problems of insolvency (bankruptcy) legal institution. Moscow., 2015. SPS «KonsultantPlyus».

[104] Podolskii Yu.D. Separate disputes in bankruptcy. Moscow, 2020.

[105] Bankruptcy of business entities. resp. ed. I.V. Yershova, Ye.E. Yenkova. Moscow, 2016. P. 71.

[106] Telyukina M.V. Meeting of insolvent debtor creditors as bankruptcy law subject. Lawer. 2003. № 2. P. 22–30.

[107] Bartov V.M. Legal nature of agreement concluded in debtor's bankruptcy during credit organization restructuring settlement. Legal world. 2001. № 5. P. 36.

[108] Pavlodskii Ye.A., Zaitsev O.R. Legal status of creditors in a bankruptcy case. Russian law journal. 2004. № 7. P. 38–39.

[109] Shershenevich G.F. Trade Law Course. V. 4. P. 415.

[110] Dorokhina Ye.G. Nature of legal relationship of insolvency (bankruptcy). Journal of Rus. laws. 2006. № 5.

In addition to such key figures as the debtor-developer, the construction participant, among developer's bankruptcy case entities, the already mentioned public law company "Territory Development Fund" should be especially highlighted. The appearance of this participant in the case was a consequence of legislator introducing in this areaa a new compensation mechanisms aimed at meeting the requirements of construction participants[111].

The Fund's participation in developer's bankruptcy procedure is regulated by the Bankruptcy Law provisions, the Federal Law provisions of July 29, 2017 No. 218-FZ "On a public law company for shared construction participants citizen rights protection in under developers' insolvency (bankruptcy) and on amendments to individual legislative acts of the Russian Federation." Having set the Fund's creation in the mentioned Federal Law, the legislator naturally included it among the developers' bankruptcy participants.

It should be noted that the need for such a professional figure in a developer's bankruptcy appearance has been discussed in the scientific literature[112]. In particular, it was proposed to consider accumulating funds through the creation of "special funds" possibility, which could subsequently be used to restore the rights of citizens who paid money to a developer who was later declared bankrupt[113]. Although certain negative aspects were highlighted (additional financial burden on the developer [114], the unreasonableness of equating new developers with developers who for a long time consci-

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[111] Pleshanova O.P. Compensation mechanisms for "defrauded shareholders" in developer's bankruptcy. Institute of insolvency (bankruptcy) in legal system of Russia and foreign countries: theory and practice of law enforcement. Resp. ed. S.A. Karelina, I.V. Frolov, 2020. P. 150–151.
[112] Markov P.A., Barkova L.A. On influence of law socialization on reforming legislation on developer's bankruptcy. Law and Economics. 2015. № 10. P. 27–32.
[113] Markov P.A., Barkova L.A. Features of maintaining creditors' claims double register in developers' bankruptcy. Vestn. of arbitration practice. Law and business: convergence of private and public law in the regulation of business activities: collection of articles. Art. IV Annual International scientific-practical Conf., dedicated to the memory of Honored Lawyer of the Russian Federation, Doctor of Law, Professor N.M. Korshunov. pp. 532–536.
[114] Toporova Yu.S. Compensation Fund as a way to protect rights of citizens participating in shared construction. Society. The science. Innovations (NPK-2017): collection. Art. All-Russian annually scientific-practical conf. Vyatka, 2017, 2017. P. 6082–6088.

entiously fulfilled their obligations to establish the amount of mandatory contributions[115]), the creation of the Fund as a subject, activity of which should be aimed at reducing the risks of unfinished construction, at increasing the reliability of protecting citizens rights, primarily in the event of developer's bankruptcy[116] was given a positive assessment.

In a bankruptcy case, the Fund can function in three roles.

Firstly, the Bankruptcy Law clause 2.6 of Art. 201.1 gives the Fund the right to act as an applicant in the case, to apply for declaring the developer bankrupt, including cases where the Fund is not the developer's creditor. Thereafter, the Fund can act as an applicant in the case.

Secondly, in case when the Fund, in the manner established by Federal Law No. 218-FZ of July 29, 2017, decided to finance actions on construction of unfinished construction projects fulfillment, the Fund, by virtue of clause 1 of Art. 201.8-1 of the Bankruptcy Law participates developer's bankruptcy case as his creditor, whose claims are subject to satisfaction as part of the third stage of claims for current payments.

Thirdly, according to the Bankruptcy Law sub. 21 clause 1 art. 201.1, when the Fund made payments to shared construction participants (in connection with which shared participation agreement claim rights were transferred to it), as well as when the Fund is a participant in construction on the basis of shared construction participation agreement when carrying out activities for financing unfinished construction projects fulfillment in respect of which funds from participants in shared construction were raised (i.e., agreements concluded in accordance with clause 1.1 of Article 201.8-1 of the Bankruptcy Law), the Fund acts in bankruptcy proceedings as a shared construction participant.

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[115] Barabina M.P. Legal regulation of developers' insolvency (bankruptcy): abst. dis. ...cand. of legal science. P. 16.

[116] Zakupen T.V. Problems of realizing "defrauded shareholders" rights in multi-storey housing construction implementation. Vestn. arbitration practice. 2017. № 6 (73). P. 42-49; Oganesyan V.G. Fund for Shared Construction Participants Citizens Right Protection: Comparative Analysis. Young scientist. 2018. № 17 (203). P. 251–252; Kolotovkina O.B. Legislative innovations regarding shared construction participants rights protection, Citizens' Rights Protection Foundation. Science and innovation of XXI century: materials of IV All-Russia. conf. young scientists. Surgut: Surgut State University. 2017. P. 280–283.

Besides, the Fund may be the acquirer of the rights and obligations of the developer in the manner set in Art. 201.15-1, 201.15-2, 201.15-2-1 Bankruptcy Law. However, the following should be noted here. Participation in the case of the acquirer (in the case when we are not talking about the Fund, which is a participant in any of developers' bankruptcy cases by virtue of the Bankruptcy Law direct instructions) ends with the entry into force of the arbitration court's ruling on the transfer of the property and obligations of the developer to the acquirer. At the same time, in cases where the acquirer, in order to comply with the conditions for "replacing the developer" set by the Bankruptcy Law, deposited funds into the developer's special bank account to satisfy the claims of first- and second- priority creditors, current payments in accordance with the provisions of the Bankruptcy Law Art. 201.15, and the value of the developer's rights to a land plot with inseparable improvements located on it is less than the total amount of included in the register construction participants claims, then the corresponding claims of the acquirer will be included in the register of corresponding priority creditors' claims (clause 11, clause 12 of article 201.15, clause 14 of article 201.15-2 of the Bankruptcy Law), in connection with which he becomes a debtor's creditor with all his rights and obligations.

All of the above mentioned allows us to conclude that the participation of the Fund in developer's bankruptcy as the latter rights and obligations acquirer is inappropriate to distinguish as a separate type, since it is covered by the second case.

The Fund can participate in developer's bankruptcy in one of the specified roles, as well as mix the listed statuses in any combination. Depending on which category of participants in a given case the Fund belongs to, it has the scope of powers that the Bankruptcy Law grants to the corresponding group of bodies[117].

The legislator vests the Fund with the following special powers:

[117]See Slavich M.A. The special role of the Public Law Company "Fund for the Protection of the Rights of Citizens Participating in Shared Construction in the Framework of a Developer's Bankruptcy Case. Business, Management and Law. 2020. № 3. P. 35-36.

the right to file an application to declare the debtor-developer insolvent (bankrupt). Obviously, the fact that the Fund has such right should ensure promptness in making decisions regarding a developer showing insolvency signs[118]. In turn, this will make it possible to promptly limit the number of potential "victims" from the activities of such a developer;

control over arbitration managers who may be appointed when bankruptcy proceedings are introduced against the developer. By implementing the procedure for arbitration managers activities accreditation, the Fund actually exercises control over the compliance of their candidacy and activities with the requirements of the law;

the right, if there are grounds for doing so, to apply to the arbitration court to challenge the developer's transactions.

Among other things, the Fund has the ability to control developer's bankruptcy procedure as a body participating in a bankruptcy case and to duly respond in a timely manner to possible violations.

In addition to the listed powers, the Fund's special place in the developer's bankruptcy procedure is also due to the leading role it plays in deciding on the procedure, methods of satisfying construction participant's rights, and special bankruptcy procedures implementation (they are discussed in more detail in the next chapter).

Taking into account the special rights granted to the Fund, one should agree with E.S. Yulova's opinion, who notes that its role in developers' bankruptcy cases is essentially similar to the role that State Corporation "Deposit Insurance Agency" performs in cases of credit institutions bankruptcy[119]. Official comments on the legislation of the Fund creation also indicate that the legislator, when establishing the relevant norms, pursued precisely this goal[120]. However, the Fund's activities analysis does not allow us to

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[118] Kozobrodova Ye.S. Public and private in the legal regulation of developers' insolvency (bankruptcy). Protection of rights and legitimate interests of shared construction participants. Current problems of insolvency (bankruptcy) institution. View of young scientists: collection of art., ed. S.A. Karelinoi. Moscow, 2019. P. 100.

[119] Yulova Ye.S. New legislation on developers' bankruptcy in creation of the Fund for construction participating citizens rights protection. Liberal democratic values. P. 4–6.

[120] Barabina M.P. Legislation on construction organizations (developers) bankruptcy: advantages, application and lawmaking issues. Lawer. 2018. № 3. P. 62.

draw a conclusion about its proper effectiveness. To a certain extent, this is due to the imperfection of the legislation regulating it, due to which it requires improvement.

The Fund of a constituent entity of the Russian Federation may also be a developer's bankruptcy participant. Such funds creation is set in Art. 21.1, 21.3 of Federal Law No. 214-FZ. At the same time, legal regulation of their activities is carried out by the Civil Code of the Russian Federation, Federal Law dated January 12, 1996 No. 7-FZ "On Non-Profit Organizations".

The Fund creation is carried out by a regulatory legal act of the corresponding subject of the Russian Federation after inclusion in the problematic objects unified register specified in Part 1.1 of Art. 23.1 of Federal Law No. 214-FZ, information about construction projects located on the territory of a constituent entity of the Russian Federation. When creating the Fund, a subject of the Russian Federation can determine that the financing of its activities will be carried out exclusively from the budget of the subject of the Russian Federation, and also provide for the possibility of financing it on a general basis, i.e., with the involvement, for the purpose of settling development obligations, of providers of federal budget funds and (or) funds provided by the "Territory Development Fund" public law company. Depending on the sources of funding, the law establishes the scope of the Fund's powers (Part 1.1, Article 23.1 of Federal Law No. 214-FZ).

In a case of developer's bankruptcy, the Fund of a constituent entity of the Russian Federation can act as property (property rights) and obligations of the developer to construction participants' acquirer, the requirements of which are included in the register when settling the developer's obligations to construction participants in the manner established by the norms of Art. 201.15-1, 201.15-2 Bankruptcy Law.

The Fund of a constituent entity of the Russian Federation can also be the acquirer of property (including property rights) and obligations of the developer for engineering and technical infrastructure facilities construction, social infrastructure facilities intended for the placement of preschool educational organizations, general education organizations, clinics, transport infrastructure facilities according to Art. 201.15-2-1 of the Bankruptcy Law (for more information about the procedure and conditions

for implementing special procedures within the framework of the developer's insolvency (bankruptcy), see Chapter 3 of this work).

It is obvious that the Fund of a constituent entity of the Russian Federation participation in the developer's bankruptcy has a kind of "derivative" nature, depending on the presence (absence) of the Territorial Development Fund decision on the advisability of financing measures to complete the construction of unfinished construction projects.

Moscow government agency, vested with the authority to apply to an arbitration court with a corresponding application, may also participate in a developer's bankruptcy case. This is due to the special status of the capital of Russia, the scale of construction activity on its territory[121], which was taken into account in the Law of the Russian Federation of April 15, 1993 No. 4802-1 "On the status of the capital of the Russian Federation." Its norms correspond to the provisions of clause 2.6 of Art. 201.1 of the Bankruptcy Law, which set the right of this body to apply to the arbitration court to declare the developer bankrupt, regardless of whether he is debtor developer creditor. However, unlike the Fund, the government authority of Moscow can exercise such a right only if the following conditions are simultaneously met:

at the time of application, a unitary non-profit organization was created in Moscow in the Fund organizational and legal form of a in accordance with Art. 21.3 of Federal Law No. 214-FZ;

the developer, towards whom an application to declare him bankrupt is filed, on the day of this application being sent to the arbitration court, is constructing apartment buildings with shared construction participants funds on Moscow territory exclusively;

obligations to complete apartment buildings construction and (or) other real estate objects will be fulfilled at Moscow city budget expense, the specified unitary non-profit organization funds (Article 4 of the Law of the Russian Federation of April 15, 1993 No. 4802-1).

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[121] Kalashnikov M.I. Implementation of unauthorized construction by the developer - illegal construction of residential and non-residential premises. Public and private law. 2017. № 1 (33). P. 89.

At the same time, unlike the Fund, the participation of Moscow government body in developer's bankruptcy case is limited by the right to file an application with the court indicating arbitration manager position candidacy, the right to participate in court proceedings at the stage of application validity verification, opening a bankruptcy production.

The bodies participating in debtor-developer bankruptcy case, Art. 201.2. The Bankruptcy Law include the authorized executive body of the constituent entity of the Russian Federation, exercising control and supervision in apartment buildings shared-equity construction and (or) other real estate objects in the territory of this construction. This increase in the subject composition of developer bankruptcy cases was positively assessed by specialists [122], the active participation of this body in these cases was considered as serious support in the arbitration manager activities [123]. Although today the leading, control role in this area is assigned to the Fund, the authorized body participation possibility in the developer's bankruptcy case is preserved.

Probably, in this case, it is fair to note the redundancy of the participants in the process, who must, by exercising the rights granted to them, exercise control over compliance with construction participants rights, including developer's bankruptcy stage. However, this remark is relevant to the legal regulation of shared-equity construction activities field in general, regarding in particular control and supervision issues of developers' activities. With the introduction of changes to the shared-equity construction regulating legislation, the functions of monitoring developers' activities were delegated to the Fund, which was endowed with the corresponding powers, but at the same time these powers were retained by the authorized executive body of the constituent entity

[122] Mikhailenko Ye.M., Fefilov Ye.A. Mikhailenko E.M., Fefilov E.A. Current problems of developers bankruptcy. Law and Education. 2013. № 2. P. 121.
[123] Nekrasov O. S. Bankruptcy of developers. Arbitration manager. 2013. № 6; 2014. № 6. P. 20–21.

of the Russian Federation. At the same time, existing doubts about the maximum effectiveness of the Fund's participation in developers' bankruptcy cases [124], especially taking into account that it carries out this activity within the entire state, allow us to assert that the participation in developer's bankruptcy case of the authorized body of the relevant entity in control of the situation "on place", quite justifiable.

There is an opinion in the literature on the advisability of including procuracy authorities among the developer's bankruptcy case participating bodies[125]. This proposal is justified by the fact that at the stage of normal economic activity the prosecutor's office can actively monitor compliance with shared-equity construction citizens' rights and apply appropriate response measures[126], but after a bankruptcy case is initiated against the developer, its role is reduced.[127].

We believe that this proposal cannot be considered as justified. The participation of the prosecutor's office developer's bankruptcy is unlikely to increase the effectiveness of protecting shared construction participants rights, since in fact it should be ensured by improving the Bankruptcy Law provisions on the possibility and procedure for applying appropriate legal means of protecting shared construction participants rights for them to receipt their residential premises ownership.

The arbitration manager figure, who is a mandatory participant in all insolvency (bankruptcy) cases, regardless of the debtor's specifics, requires special attention when considering the subject composition of developer's bankruptcy[128]. This is because a given body receives the right to participate in cases of developers' insolvency after

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[124] Yulova Ye.S. New legislation on developers' bankruptcy in creation of the Fund for construction participating citizens rights protection. Liberal democratic values. P. 4.
[125] Kuznetsov A.P. Developer bankruptcy: theory and practice of protecting construction participating citizens' rights. P. 12 and next.
[126] Pelevina O.V. Protection of shared construction participants rights. Legality. 2016. № 10 (984). P. 19–22; Sushina T. Subject of supervision over implementation of laws on citizens participation in shared-equity construction. Legality. 2009. № 2. P. 9–14.
[127] Yershov O.G. On prosecutorial response need in case of developer's bankruptcy. Arbitration and civil procedure. 2013. № 11. P. 14; Shamshurin L. On prosecutor participation in civil cases proceedings: issues of theory and practice. Arbitration and civil procedure. 2009. № 3. P. 14.
[128] Vladika Ye.E. Problems of legal regulation of activities of an arbitration manager. Abst. dis. ...cand. of legal science. Moscow 2007. P. 3.

mandatory accreditation with the Fund, which is possible only if the candidate for accreditation meets certain requirements. In addition to the general requirements that an arbitration manager must meet in particular, a body that can be appointed as a bankruptcy (external) manager in a developer's bankruptcy must meet the following conditions:

the specified body must have at least two years of work experience in management positions in companiess organizing construction and self-construction, reconstruction and capital construction projects major repairs, or perform the duties of an arbitration manager in the procedure applied in developer's bankruptcy case (in relation with at least two developers);

in relation to such a body, there must be no cases of legislation of the Russian Federation on insolvency (bankruptcy) violation for at least two years preceding accreditation, leading to a significant infringement of creditors' rights, unreasonable expenditure of the developer's bankruptcy estate, disproportionate satisfaction of creditors' claims, as well as absence of ban from arbitration manager duties performance related to non-fulfillment or improper performance within five years before the date of filing an accreditation application;

such body should not have been held criminally liable in accordance with a judicial act that has entered into legal force for unlawful actions in bankruptcy, intentional and (or) fictitious bankruptcy;

this candidate must undergo training according to the program approved by the Fund (clause 2.1 of Article 201.1 of the Bankruptcy Law).

In addition, according to clause 2.3 of Art. 201.1 of the Bankruptcy Law, the Government of the Russian Federation may establish additional requirements for the for arbitration managers as bankruptcy managers (external managers) accreditation conditions in developers' bankruptcy.

It should be noted that the doctrine proposes to establish additional requirements that a given body must meet, since the effectiveness of the procedure and the result obtained by creditors largely depend on arbitration manager activities in developer's

bankruptcy[129]. Such additional mandatory criteria included relevant law violations absence when carrying out their activities (proper reputation) and the presence of the required experience (professionalism)[130].

It is obvious that when introducing amendments to the Bankruptcy Law, the legislator actually supported these proposals. He specified work experience requirement as having experience in managerial positions in construction industry enterprises (at least two years) or having experience as an arbitration manager in the procedure applied in developer's bankruptcy (in relation to not less than two developers) in particular. At the same time, law enforcement practice analysis allows us to conclude that non-compliance with these criteria most often does not allow applicants to obtain accreditation from the Fund[131].

At the same time, the literature has expressed the opinion that these restrictions create the possibility of various abuses. To reduce this risk, it was proposed to establish a minimum number of accredited arbitration managers (at least 10) for each entity[132].

We allow ourselves to disagree with the expressed point of view due to the following circumstances.

Firstly, how can the Fund force the required number of arbitration managers in each constituent entity of the Russian Federation (even if they meet the requirements specified in paragraph 2.2 of Article 201.1 of the Bankruptcy Law) to at least undergo training under the Fund's program and submit the appropriate application ?

Secondly, the arbitration manager's application for accreditation in itself should not put the Fund in a "hopeless" position, when it must necessarily approve his candi-

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[129] Penkova V.N. Bankruptcy of construction organizations. Arbitration manager. 2013. № 6.
[130] Belousov V.N. Problems of rules enforcement on developers' bankruptcy and ways to resolve them. Arbitration and civil process. 2016. № 4. P. 52–57.
[131] Resolutions of the Arbitration Court of the Moscow District dated 21.01.2020 on case № A40-92109/2019, dated 17.06.2019 on case № A40-233587/2018, Ninth Arbitration Court of Appeal dated 14.02.2020 on case № A40-246391/2019, dated 09.01.2020 on case № A40-192482/2019.
[132] Shashkov I.K. Legal regulation of developers. P. 188.

dacy in the absence of the required minimum number of accredited arbitration managers in the relevant constituent entity of the Russian Federation, even if this body does not meet the requirements established by law requirements.

It seems that the following will help reduce the risk of possible abuses in this area.

So, according to clause 2.3 of Art. 201.1 of the Bankruptcy Law, it is possible to cancel the Fund arbitration manager accreditation. The grounds for such decision are enshrined in clause 3.8 of the Procedure for arbitration managers accreditation for their powers as bankruptcy trustee (external manager) exercising purpose in developer's bankruptcy case in accordance with the Federal Law on Bankruptcy (approved by order of the Ministry of Economic Development of Russia dated May 23, 2018 No. 263) . These include:

establishing the fact that the arbitration manager does not comply with the accreditation conditions;

arbitration manager's failure to fulfill his obligations to provide the Fund with information and documents about the activities of the bankrupt developer (Clause 2.3-1 of Article 201.1 of the Bankruptcy Law, Part 19 of Article 16 of the Federal Law of June 27, 2019 No. 151-FZ).

Seems it would be advisable to also include among these grounds committed by a manager violations in exercising his powers as a bankruptcy (external manager) in a bankruptcy case, established by the court.

Thus, the circle of bodies participating in developers' bankruptcy cases in the arbitration process is quite specific, as evidenced by the presence of special entities and the scope of their powers. At the same time, taking into account t Territorial Development Fund's leading role in these cases, in order to ensure the achievement of the goal of applying § 7 of the Bankruptcy Law, special attention is required to the legal regulation of the Fund's activities and the liability of its officials.

§ 2. Developer as a subject of an insolvency (bankruptcy) case

The developer figure is key in the insolvency (bankruptcy) procedure. Developers are a special debtors category, whose activities (like the activities of city-forming, agricultural, insurance, credit, strategic organizations, natural monopolies) are subject to special rules. This is evidenced in particular by the fact that developer's activities nature has a competitive legal significance. Thus, from the possibility of applying competitive procedures point of view, the developer can be classified as a debtor who goes bankrupt in a simplified manner, since in accordance with the Bankruptcy Law, in case of bankruptcy, not all competitive procedures provided for therein can be applied[133]. We also note that the amendments made by the Federal Law No. 218-FZ actually provide for a presumption of classifying the developer as an insolvent debtor, since they establish the mandatory introduction of bankruptcy proceedings based on the consideration results of the application validity for declaring him insolvent (bankrupt).

The developer concept legal definition is given in Art. 201.1 of the Bankruptcy Law. According to sub. 1 of the mentioned norm, the developer is a body who attracts funds and (or) property of construction participants - a legal entity, regardless of the organizational and legal form, including a housing construction cooperative, or an individual entrepreneur, to whom there are requirements for the transfer of residential premises or monetary demands.

As fairly noted in the literature, Russian legislation does not contain a universal definition of a developer, which can be applied in various areas[134]. The concept that the legislator formulated in Art. 201.1 of the Bankruptcy Law, does not coincide with similar categories (developer, customer-developer, investor-developer) used in areas not related to bankruptcy[135].

On one hand, its content is broader than the term of the same name contained in

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[133] Bankruptcy of business entities. resp. ed. I.V. Yershova, Ye.E. Yenkova P. 46.

[134] Chumakova O.V. Legal status of developer in capital construction. Questions of Rus. and international rights. 2019. V. 9. № 1-1. P. 82.

[135] Ref.: Karelina S.A., Frolov I.V. Developer bankruptcy. Theory and practice of law enforcement. P. 56; Mandryukov A.V. Some features of developers' bankruptcy cases. Construction: accounting and taxation. 2014. № 9. P. 69–70.

Federal Law No. 214-FZ, since for the purposes of applying § 7, for example, it is allowed that not only a legal entity, but also an individual entrepreneur can act in this capacity. On the other hand, Federal Law No. FZ-214 is subject to application to the relations of the parties for the construction by one body (developer) with the funds involvement of another (shared construction participant) not only of multi-apartment residential buildings, residential buildings of blocked development, buildings (structures) intended exclusively for placing parking spaces. It covers the construction of any real estate objects (except for industrial purposes) with the involvement of shared construction participants funds. Likewise, the concept of a developer for the purposes of bankruptcy legislation does not coincide with related terms that are used in other regulatory legal acts[136], in the Town Planning Code of the Russian Federation, Federal Law No. 169-FZ "On Architectural Activities in the Russian Federation", Federal Law No. 39-FZ "On investment activity in the Russian Federation, carried out in the form of capital investments."

Let us consider the signs, the sum of which makes it possible to classify the debtor as a developer, applying the provisions of § 7 of Chapter to his bankruptcy. IX of the Bankruptcy Law.

The first sign is the category of civil turnover subjects, to bankruptcy of whom the special rules for the developer's bankruptcy can be applied.

According to the Bankruptcy Law (we repeat), a legal entity, regardless of its legal form, or an individual entrepreneur can act as a developer, to whom special provisions of the Bankruptcy Law may be applied. In relation to these bodies, creditors must have claims for residential premises transfer or monetary claims.

In other words, the legislator has clearly established that a "simple" individual cannot act as a developer. The special provisions of § 7 can be applied to the bankruptcy

[136] Grinev V.P. Features of developers' bankruptcy (legal regulation, how to preserve your rights and legitimate interests). Law and business: convergence of private and public law in the regulation of entrepreneurial activity: collection. Art. IV Annual International scientific-practical Conf., dedicated to the memory of Honored Lawyer of the Russian Federation, Doctor of Law, Professor N.M. Korshunov. pp. 545–554.

of an individual only if this body is registered as an individual entrepreneur, i.e., has entered into civil law circulation as not a citizen, but a professional participant engaged in business activities. However, even with such an unambiguous law wording, the law enforcer went further and, in order to effectively protect shared construction participants rights, allowed for a broad interpretation of the analyzed definition.

Thus, considering a cassation appeal in a case where developer's bankruptcy provisions application in relation to a citizen was refused on the grounds that the individual is not a developer within the meaning of Art. 201.1 of the Bankruptcy Law, the Supreme Court indicated that "the lack of individual entrepreneur status for a debtor-citizen should not affect the level of legal protection of bona fide construction participants, as well as deprive them of the opportunity to take advantage of effective mechanisms provided in developer's bankruptcy[137]".

Thus, within other special conditions under which the debtor can be recognized as a developer for the purposes of the Bankruptcy Law (discussed in detail below), the very fact that an individual does not have an individual entrepreneur status is not an obstacle to special provisions of § 7 application in his bankruptcy.

The legal entity that raised funds for the relevant facilities construction organizational and legal form does not have legal significance for resolving the issue of developer's bankruptcy proceedings applying possibility. The literature has expressed the opinion that the most convenient legal form for carrying out the activities of a developer in normal economic turnover is a limited liability company[138]. In practice, besides this form, the open joint-stock company form is used, which, according to A.P. Kuznetsov, reduces the risks of property liability directly for the founders and developer's head to a greater extent[139].

The second sign is the nature and content of the claim that creditors must have against the debtor. We believe that this feature can be considered key, since in terms of

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[137] Determination of the Judicial Collegium for Economic Disputes of the Supreme Court of the Russian Federation dated 20.08.2018 on case № 305-ES18-5428(2), A40-180791/2016.

[138] Binkovskaya A.A. The "developer" concept in real estate construction field under Russian legislation. Law and Economics. 2016. № 7.

[139] Kuznetsov A.P. Developer bankruptcy: theory and practice of protecting construction participating citizens' rights. Moscow. P. 10.

the content of the concepts disclosed in Art. 201.1, differ from those used in civil circulation.[140]

Residential premises transfer requirement in sub. 3 hours 1 tbsp. 201.1 refers to the requirement of a construction participant to transfer, on the basis of a paid contract, to him the residential premises ownership (apartment or room) in an apartment building or a block building if the number of such houses is three or more in one row (hereinafter referred to as a block building), which at raising funds and (or) other property of the construction participant have not been put into operation, or an individual residential building, the construction of which is carried out in accordance with Federal Law No. 214-FZ.

Monetary claim, according to sub. 4 hours 1 tbsp. 201.1, can be a demand from a construction participant for the return of funds paid under an agreement providing for the residential premises transfer, parking spaces and non-residential premises; a requirement for losses compensation in the form of actual damage caused by a violation of the developer's obligation to transfer residential premises, parking spaces, non-residential premises, including termination of such contracts, recognition of them as unconcluded or invalid. According to L.A. Novoselova, these obligations can be called "secondary monetary obligations", since they are derived (transformed) from initially non-monetary obligations for the transfer of real estate[141].

The agreement legal qualification under which funds were raised does not matter. In the provisions of pt. 3 1 art. 201.1 of the Bankruptcy Law, the legislator indicates exclusively the remuneration of such an agreement. Part 6 of the article contains an open list of transactions, which makes it possible to recognize the corresponding requirement for a construction participant (purchase and sale, loan, preliminary agreement, property contribution as investment to the joint capital of the partnership, simple partnership agreement, bill of exchange issuance, housing construction cooperative

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[140] See Slavich M.A. The developer as a subject of insolvency (bankruptcy). Business, Management and Law. 2019. № 3. P. 71-74

[141] Novoselova L.A. On legal consequences of violating a monetary obligation. Vestn. of Supreme Arbitration Court of the Russian Federation. 1999. № 1. P. 85.

funds contribution)[142]. This list is not exhaustive, which doctrine reasonably considers to be Bankruptcy Law's achievement[143]. The fundamental purpose of concluding a transaction for a construction participant is to obtain ownership of residential premises, parking spaces, non-residential premises[144].

Considering the specifics of developer's bankrupt requirements, let us pay attention to the following provisions of the Bankruptcy Law that raise questions.

Thus, requirement for residential premises transfer of under the Bankruptcy Law means exclusively the creditor's demand for residential premises (apartment or room) in an apartment building or residential premises (part of a residential building) in a residential building of a blocked development, an individual residential building transfer to him. At the same time, the concepts content of construction participant, a shared construction participant, as well parking space and non-residential premises transfer requirement in their definitions indicates that since December 2018, a special legal status is applicable not only to creditors for claims for the residential premises transfer and the return of monetary claims derived from them, but also to creditors for parking spaces and non-residential premises transfer claims. Moreover, according to sub. 4 paragraphs 1 art. 201.1, the creditor's monetary claim may also arise on the basis of an agreement that provides for the transfer of a parking space or non-residential premises to him. In this regard, it becomes unclear why the definition of the concept of a developer does not indicate that, in addition to requirements for the transfer of residential premises and the return of funds, there may be requirements for the transfer of parking spaces and non-residential premises. Thus, when reading the Law literally, it turns out that monetary claim arising on the basis of an agreement providing for parking space

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[142] Savostyanova O.N. Developer in bankruptcy process: what claims can a shared construction participant have the right to submit to the arbitration court? Arbitration and civil process. 2016. № 12. P. 30–31.

[143] Pivtsaev Ye.V. Features of developers' insolvency (bankruptcy). Dis. ...cand. of legal science. St. Petersburg, 2017. P. 37.

[144] Speranskaya Yu.S. Some problems of determining construction participant status within developer's bankruptcy procedure framework. Vestn. of Nizhny Novgorod Legal Academy. 2015. № 4 (4). P. 59; Sholokhova Ye.V. Bankruptcy of developers as one of ways to exercise shared construction participants rights. Eurasian advocacy. 2016. № 5 (24). P. 49.

or non-residential premises ownership transfer makes it possible to apply special provisions on developer's bankruptcy to the debtor. At the same time, requirement for parking space and non-residential premises transfer that has not been transformed into cash does not provide for the possibility of debtor's bankruptcy as a developer. This approach seems not only unfounded: it contradicts the logic of the legislator, which he consistently pursued when amending the provisions of § 7 (confirmation at the legislative level of construction participants requirements register unity, including requirements for the performance of obligations in kind and monetary requirements, a direct indication of contract execution refusal possibility in the process of establishing a monetary claim).

Considering the above, we believe it is correct to make changes to the definition formulated in subparagraph 1 clause 1 art. 201.1 of the Bankruptcy Law and state it as follows: "A body raising funds and (or) property of construction participants (hereinafter referred to as the developer) is a legal entity, regardless of its organizational and legal form, including a housing construction cooperative, or an individual entrepreneur to whom there are demands for residential premises transfer, demands parking spaces and non-residential premises transfer, or monetary claims."

When analyzing the nature of the claims against a person who, for the purposes of applying the Bankruptcy Law, is recognized as a developer, one cannot help but pay attention to the types of objects in respect of which the debtor's creditors have a right of claim. Thus, until December 2018, only participants whose purpose of concluding an agreement was to acquire ownership of residential premises had privileged protection in relevant cases[145]. Despite all the acceptable criticism of such a deviation from the principle of all creditors equality, this position of the state was quite understandable. Everyone's right to housing is guaranteed by Art. 40 of the Constitution of the Russian Federation. Protecting citizens' rights to housing serves to achieve constitutional goals.

[145] See Slavich M.A. Bankruptcy of the developer: registration of rights of construction participants to residential premises. Traditional national-cultural and spiritual values as the foundation of innovative development of Russia. 2017. № 1. P. 65.

Today, in accordance with the norms of Federal Law No. 478-FZ, along with the interests of residential premises purchasers, the demands of individuals for parking spaces and non-residential premises transfer are protected as a priority.

It should be noted that in the doctrine, discussions on creditors who have entered into agreements in relation to non-residential premises rights inequality topic, and the rights of bodies with whom the agreements subject is residential premises ownership transfer, have been going on for a long time[146]. Moreover, immediately after entring into force of the Bankruptcy Law § 7 Ch. IX provisions, arbitration courts allowed the rules established in relation to claims for residential premises transfer to be applied by analogy to claims in relation to non-residential premises. At the same time, almost immediately an opposite law enforcement practice was formed, which is still relevant today.[147] The basis of its content is the position according to which «the norms of § 7 Ch. IX of the Bankruptcy Law, based on the literal meaning of the words and expressions contained therein, do not provide for the inclusion in the register of claims for the transfer of residential premises of bodies' claims for non-residential premises transfer; the applicant's demands can be transformed into monetary claims subject to satisfaction in the general manner provided for by the rules of Art. 134, art. 142 of the Bankruptcy Law[148]». In this regard, many researchers, in order to ensure guarantees of bodies rights who have entered into an agreement with the developer on non-residential premises ownership transferring after the construction completion, have proposed supplementing the Bank-

[146] Mikhailenko Ye.M., Fefelov Ye.A. Enforcement conflicts of civil legislation, which changed procedure for filing claims of construction participants against developer in bankruptcy. Legal issues of construction. 2013. № 1. P. 8–10; Rodionov M. Unequal in rights. Ezh-YuRIST. 2013. № 25; Slastilina Yu.V., Soroka O.N. Consideration of disputes related to developers' bankruptcy. Arbitration manager. 2013. № 2. P. 39–43.

[147] Spiridonov V.V. On some issues of applying provisions practice on developers' insolvency (bankruptcy) in Russia. Tauride scientific. Reviewer. 2016. № 11-2 (16). P. 127; Tichinin S.V., Romanenko D.I. Developer bankruptcy. How to protect shared construction participants rights: issues of arbitration practice. Arbitration and civil process. 2014. № 10. P 38–39.

[148] Rulings of the Supreme Court of the Russian Federation dated 09.02.2016 № 302-ES15-6122, dated 12.10.2015 № 304-ES15-9851.

ruptcy Law with provisions on the for considering claims of construction participants for non-residential premises transfer procedure[149]. However, this proposal, supported by the business community[150], did not find support from the legislator.

Indeed the acquisition of non-residential premises rights cannot be considered as satisfaction of personal, family, household needs even when a citizen acts as a participant in shared construction. Therefore, it is easy to justify legislator's position, the main goal of whom is to protect the socially unprotected category of creditors, to prevent violation of their rights to purchase housing. All other creditors must be in an equal position. Thus, the inclusion of non-residential premises in the competitive mass is quite justified[151].

Indeed supporters of the position on equalization of rights to protect residential and non-residential premises shareholders in the developer's bankruptcy case can point out that citizens who enter into a contractual relationship with the developer for the subsequent acquisition of residential premises ownership do not always acquire it for subsequent residence[152]. Quite often, equity participation agreements conclusion (hereinafter referred to as DDU) is a form of funds investment; citizens purchase housing for subsequent resale. And although in the legal literature an opinion is more often expressed about the non-entrepreneurial nature of DDU, the opinion of specialists who point out that such statements are controversial, based, among other things, on the provisions of Federal Law No. 214-FZ itself (clause 9 of Article 4)[153]. Moreover, when adopting the norms of § 7 and introducing amendments to them, the legislator took it

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[149] Andryusishina T.O., Tsaritsinskii N.V. On some problems of transferring premises to construction participants in developer's bankruptcy. Glagol pravosudiya. 2015. № 1 (9). P. 8.

[150] Fedorova N. Buyers of non-residential premises will have equal rights with shareholders of apartments // URL: https://www.banki.ru/news/bankpress/?id=10637649 (application date 21.03.2021).

[151] See Slavich M.A. Protection of the rights of professional investors in the event of bankruptcy of developers. Entrepreneurial activity: civil, administrative, environmental aspects: monograph/responsible. ed.E.V. Karpova. Magnitogorsk, 2017. P. 58-99.

[152] Osipova I.Yu. Legal status of shared construction participants in relation to non-residential premises in developer's bankruptcy. Current problems of Russian private law. Materials of Russian scient.-pract. conf. Saransk: YurEksPraktik, 2016. P. 101.

[153] Averkin Ye.V. Investment nature of shared construction participation agreement. Current problems of Russian private law: Vseros. scientific-practical conf. materials, Saransk: YurExPractik, 2016.

as an axiom that citizens would enter into DDU in relation to residential premises exclusively for personal, family, and domestic needs.

It should be noted here that in March 2022, the Supreme Court of the Russian Federation, in two rulings, adopted in the same developer's bankruptcy, formulated a legal position that differed significantly from the established practice. Assessing the possibility of providing a specific individual with priority protection of his rights by including his claims in the register of construction participants claims, the Supreme Court of the Russian Federation directly recognized him as a professional investor, taking into account the number (37) of agreements concluded with him[154]. Although at the same time the Court pointed out the need to prove payment by this body for the acquired rights under the DDU as well, in fact, it departed from the axiom previously accepted by default by the courts established by law (about the need to protect the rights of an individual as a body taht always enters into DDU for his personal needs, not related to business activities).

In connection with the above, there are reasons to hope that the legal approach reflected in these definitions will be further developed in the practice of both the Supreme Court of the Russian Federation and lower authorities. When considering applications from individuals to include their claims in the register of construction participants claims, the courts will evaluate the purpose of concluding the DDU not formally, but taking into account all the circumstances of the case.

And the Supreme Court of the Russian Federation did not keep itself waiting long. In August 2022 already, the Judicial Collegium for Economic Disputes considered the cassation appeal of a citizen, whose demand to include in the register for 15 apartments transfer the courts of appeal and cassation instances completely refused. At the same time, the courts did not evaluate the circumstances of payment for apartments, since they considered them to have no legal significance. In their opinion, given the number of demands, protection of ta citizen-investor rights should have been denied.

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[154] Determinations of the Judicial Collegium for Economic Disputes of the Supreme Court of the Russian Federation dated 01.03.2022 № 308-ES20-24350(6), № 308-ES20-24350(5).

The panel of judges agreed with the lower courts conclusions to the extent that in a situation where a citizen acquires a significant number of apartments for investment purposes (for subsequent resale and profit), his claims against a developer who is in bankruptcy are not subject to priority satisfaction in the regime of claims of a construction participant. However, it considered it erroneous to classify such investment activities as an abuse of right (Article 10 of the Civil Code of the Russian Federation).

The case was returned for a new trial. At the same time, the definition formulated a clear and unambiguous legal position of the highest court: when considering such requirements, the courts should establish the purpose of acquiring each apartment. The very fact of concluding agreements in relation to several apartments cannot yet unconditionally indicate that they were all concluded for investment purposes (the acquisition of several apartments may be due to the need to satisfy the housing needs of not only the citizen, but also members of his family and other close bodies). At the same time, in case when some apartments were purchased for consumer purposes, and others for investment purposes, the creditor's claims are subject to inclusion in the register based on their legal nature. If there are apartments intended for the consumer needs of the creditor and his relatives, the corresponding requirements are subject to inclusion in residential premises transfer register. Requirements of an investment nature are subject to inclusion in the fourth stage of the register as secured by the pledge of those apartments that were due to the creditor as a shareholder under the terms of DDU[155].

This approach seems more than correct and justified. Citizens entering into DDU for investment purposes should not receive advantages over shareholders of commercial premises or legal entities. At the same time, there is no reason to deprive such bodies of protection, since they have properly fulfilled their obligation to pay the rights of claims under the DDU. Since in the above case the purpose of concluding a DDU is to make a profit, the qualification of the claim as if it arose from a legal entity or from a shareholder of non-residential premises fully corresponds to its legal nature.

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[155] Determination of the Investigative Committee of the Supreme Court of the Russian Federation dated 22.08.2022 № 305-ES22-7163.

The issue of potential constitutional inequality of creditors rights of who have claims on residential and non-residential premises has been repeatedly raised before the Constitutional Court of the Russian Federation, and each time the legislator has found support from it[156]. As the main argument, the Constitutional Court referred precisely to the fact that special provisions on developers' bankruptcy are designed to ensure citizens right to housing realization, which is guaranteed by Art. 40 of the Constitution of the Russian Federation. The remaining creditors have the right to protect their interests with the same scope of rights and obligations that bankruptcy creditors are entitled to under the Law.

Taking into account these arguments, it remained unclear for a long time why special legal protection was provided not only to citizens who entered into contracts for purchasing residential premises purpose, but also to other professional participants in civil transactions (legal entities, the Russian Federation, constituent entities of the Russian Federation, municipalities) in cases where the subject of the concluded contracts was residential premises. This was seen as an inconsistency in the legislator's logic. We have previously argued that a reasonable and justified approach is one in which special legal protection is provided only to citizens who have entered into legal relations with the debtor for the purpose of purchasing residential premises. All other creditors must be treated equally[157]. At the same time, in the relevant part, the legislator's position in the changes of 2018 was already consonant with the direction formulated in the literature of priority protection of the rights of citizens only within developer's bankruptcy framework. Thus, privileges in protecting the rights to claim parking

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[156] Rulings of the Constitutional Court of the Russian Federation dated July 17, 2012 No. 1388-O "On refusal to accept for consideration complaint of citizen Eduard Semenovich Levchenya regarding violation of his constitutional rights by Article 201.1 of the Federal Law "On Insolvency (Bankruptcy)", dated July 17, 2012 No. 1306-O "On refusal to accept for consideration complaint of citizen Nikolay Pavlovich Emelyanov about violation of his constitutional rights by provisions of paragraph 7 of Chapter IX of the Federal Law "On Insolvency (Bankruptcy)" and Articles 17 and 223 of the Arbitration Procedural Code of the Russian Federation", dated 09.24.2012 No. 1613- About "On refusal to accept for consideration complaint of citizens Tatyana Valerievna Guzemina, Margarita Vasilievna Lekontseva and Sergei Evgenievich Malyuzhts for violation of their constitutional rights by articles 201.1, 201.4–201.6 of the Federal Law "On Insolvency (Bankruptcy)".

[157] See more details: Slavich M.A. New bankruptcy rules for developers: content and prospects. Arbitration and civil process. 2019. № 10. P. 43.

spaces and non-residential premises were initially granted only to individuals (subclause 2, part 1, subclause 3.1, part 1, article 201.1 of the Bankruptcy Law). Moreover, for the purposes of bankruptcy legislation, only those premises whose area does not exceed 7 square meters are classified as non-residential. When amending the Law in 2019, the legislator went further, excluding legal entities from the concept definition of construction participant[158]. Thus, all legal entities in developer's bankruptcy case actually moved to ordinary bankruptcy creditors category.

Such an approach is clear and is one of the manifestations of the socialization of civil legislation in the understanding that the legislator gives it and which is not always consonant with the doctrinal content of this phenomenon[159]. At the same time, the positions of scientists deserve attention, according to whom it is impossible to recognize as justified the expansion of the number of creditors who have priority claims to the debtor, the provision of additional guarantees to bodies who have the right to claim against the developer for the transfer of non-residential premises[160].

We believe that such unreasonably privileged creditors should also include bodies who have the right to demand the transfer of a parking space to the developer.

During the developers' bankruptcy procedure, the basic principles of bankruptcy law are applied with a reservation to ensure the citizens' constitutional right to housing, this is completely justified. But at the same time, special protection of any personal needs of individuals does not seem justified. Legislator's concessions re-

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[158] Federal Law of June 27, 2019 № 151-FZ "On amendments to the Federal Law "On participation in shared construction of apartment buildings and other real estate and on amendments to certain legislative acts of the Russian Federation" and certain legislative acts of the Russian Federation."

[159] Barkov A.V. Implementation of the constitutional principle of building a social state while improving Russian civil legislation. Problems in Russian legislation. 2013. № 5. P. 80–84; Bogdanov Ye.V. Socialization of modern Russian civil law as a trend of its development. Modern Law. 2018. № 1. P. 44–52; Markov P.A., Barkova L.A. On influence of law socialization on reforming legislation on developer's bankruptcy. Law and Economics. 2015. № 10. P. 27–32; Yakovlev V.F., Talapina E.V. The role of public and private law in regulating the economy. Journal of Rus. Rights. 2012. № 2. P. 11–15.

[160] Barabina M.P. Legal regulation of developers' insolvency (bankruptcy): dis. ...cand. of legal science. Ulyanovsk, 2019. P. 18.

garding the rights of claim to apartments (equalizing citizens who have rights of apartments transfer claim with those who have the right to claim residential premises[161]) would be more socially oriented and understandable, the possibility of developer's bankruptcy legislation provisions applying not only in the construction of multi-apartment residential buildings , but also in individual housing construction[162]. However, the Bankruptcy Law did not classify bodies who have the right to claim apartments ownership as participants in the construction[163].

When assessing the innovations that increase the number of objects types in respect of claim rights of which special legal protection is provided in debtor's bankruptcy, we got ahead of ourselves and indirectly identified a third feature, the presence of which allows us to apply special provisions of the Bankruptcy Law to the procedure.

Thus, the construction of not any buildings containing residential premises allows the body raising funds for construction to be classified as a developer from the point of view of bankruptcy legislation. Provisions sub. 5 part 1 art 201.1 of the Bankruptcy Law indicate that only an apartment building can act as a construction project, in which the construction participant must be given residential premises in the form of an apartment or room (subclause 3, part 1, article 201.1), a block-building house, an individual residential building or building (structure) intended exclusively for parking spaces. These provisions of the Law are not subject to broad interpretation. This conclusion is based on the legal position formulated by the Presidium of the Supreme Arbitration Court of the Russian Federation in its resolution dated July 15, 2014 in case No. A41-5150/11. The applicant in the case insisted on applying for bankruptcy to a body who constructed blocked residential buildings, which at that time did not belong to objects falling under

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[161] See more details: Men M.A. Registers of defrauded investors who invested in apartments should be created in the regions // URL: https://realty.ria.ru/20170710/408745921.html.

[162] Belousov V.N. Problems of rules enforcement on developers' bankruptcy and ways to resolve them. P. 52–57; Lebedeva A.A., Yefimov O.V. Current problems of citizens rights protection in developer's bankruptcy. Vestn. of Russian University of Cooperation. 2014. № 3 (17). P. 104.

[163] See Slavich M.A. New rules on bankruptcy of developers: content and prospects. Arbitration and civil process. 2019. № 10. P. 43.

the provisions of § 7 of Chapter. IX of the Bankruptcy Law, rules on developer's bankruptcy. When considering the case, the Presidium of the Supreme Arbitration Court of the Russian Federation pointed out that "the type of construction project being built has legal significance"; the rules of § 7 on bankruptcy do not apply to every developer[164]. Taking this into account, law enforcement practice has consistently followed the path of literal interpretation of the Bankruptcy Law provisions; it does not allow the possibility of applying developer's bankruptcy provisions to bodies who are constructing objects not expressly mentioned in the provisions of § 7.

Legal definitions of an apartment building, a blocked development residential building concepts allow us to conclude that these types of real estate have similar features[165].

Building consisting of two or more apartments, which includes common property of premises owners in such an apartment building is recognized as an apartment building under Part 6 of Art. 15, pp. 1–3 parts 1 art.. 36 of the Housing Code of the Russian Federation .

According the Town Planning Code of the Russian Federation sub. 40 art. 1 provisions, a house of blocked development is a residential building, blocked with another residential building (other residential buildings) in the same row by a common side wall (common side walls) without openings and having a separate exit to the land plot.

We agree with the researchers who explain legislator's choice when included in Ch. IX of the Bankruptcy Law provisions of § 7 in favor of multi-apartment residential buildings only that at that time the defrauded shareholders who invested their money mainly in multi-apartment residential buildings construction, which made up the majority of the housing stock, rights protecting problem was being solved[166]. With housing market development, townhouses construction, which fall under the legal definition of

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[164] Speranskaya Yu.S. Problems of determining developer's legal status in bankruptcy case. Vestn. of Nizhny Novgorod Legal 2016. № 8 (8). P. 74–75.
[165] Karelina S.A., Frolov I.V. Developer bankruptcy. Theory and practice of law enforcement. P. 60.
[166] Pivtsaev Ye.V. Features of developers' insolvency (bankruptcy). Dis. ...cand. of legal science. P. 86–87.

terraced houses, has become widespread. The legislator took this trend and made appropriate changes to subparagraph. 5 p. 1 art. 201.1. of the Bankruptcy Law. Subsequently, he included individual residential buildings among such objects, the construction of which is carried out in accordance with Federal Law No. 214-FZ.

The construction project concept content given in subparagraph. 5 pt. 1 art. 201.1 of the Bankruptcy Law, rose the opinion in the literature and judicial practice that the rules on developer's bankruptcy can only be applied in case when he has a constructed object at his disposal, an object whose construction has begun and is not completed (an unfinished object)[167]. We believe that this opinion is not based on the Law, which does not contain provisions stating that the rules on developer's bankruptcy are applicable only in the case when construction of the facility has begun. It does not ensure the achievement of the goal pursued by the presence of special provisions in the Bankruptcy Law § 7 Ch. IX. If you follow this logic, it turns out that the more unscrupulous the developer is (he received money from equity holders, but did not even begin construction), the less protected are the interests of the bodies who transferred this money to him. It is not for nothing that the Supreme Arbitration Court of the Russian Federation specifically indicated that for the purposes of applying the norms of § 7, the fact that the construction of a residential building has not been completed or has not begun does not matter[168]. However, even with such unequivocal explanations from the highest court, this argument continues to be found in law enforcement practice along with other arguments against the use of remedies provided by special rules on developers' bankruptcy[169].

It is also a wrong opinion that the provisions on developer's bankruptcy apply

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[167] Inkhireeva M.N. Features of establishing construction participants requirements within developer's bankruptcy (insolvency) case. Leningrad legal magazine. 2015. № 10. P. 84; Belousov V.N. Features of submitting construction participants claims in developer's bankruptcy case. Family and housing law. 2014. № 5; Resolutions of the Federal Antimonopoly Service of the Moscow District dated 02.10.2012 on case № A40-91655/10-88-351, dated 09.04.2012 on case № A40-91655/10-88-351

[168] Determination of the Supreme Arbitration Court of the Russian Federation fdated 06.09.2012 on case № A40-91655/10-88-351.

[169] Resolution of the Arbitration Court of the Moscow District dated 21.02.2019 on case № A41-3991/15.

only to cases when an apartment building has not been put into operation[170]. It seems that it arose due to an incorrect reading of the legal position of the Supreme Court of the Russian Federation, which repeatedly, among the signs, the sum of which makes it possible to apply special rules on developer's bankruptcy in debtor's bankruptcy procedure, indicated the presence as a construction object of an apartment building, which at the time of attraction funds and (or) property of the construction participant were not put into operation[171]. However, the key in this case is the fact that for the purposes of applying the provisions of § 7 to the debtor, the apartment building must not been put into operation at the time of raising funds for its construction from creditors[172], and not at the time of filing a bankruptcy petition with the arbitration court debtor and his consideration.

In addition to the fact that such a restrictive interpretation of the position of the Supreme Court actually deprives the creditors of the debtor, who has the completed construction at their disposal, from effectively protecting their rights (although the goal of obtaining ownership of the premises is maximally achievable[173]), it is not based on the law. By virtue of Art. 201.11 of the Bankruptcy Law, if the developer has an apartment building or a blocked residential building, the construction of which has been completed, the bankruptcy trustee is obliged to take the measures provided for in this article aimed at satisfying the claims of construction participants by transferring ownership of the relevant premises to them. Thus, the Law directly allows the developer, whom the special rules of § 7 Ch. IX, completed construction of the facility at the time bankruptcy proceedings were introduced to.

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[170] Svit Yu.P. Bankruptcy of non-profit corporations in housing sector. Russian law: experience, analysis, practice. 2014. № 12. P. 95–99.

[171] Determinations of the Judicial Collegium for Economic Disputes of the Supreme Court of the Russian Federation dated 20.08.2018 on case № 305-ES18-5428(2), A40-180791/2016, dated 22.08.2016 № 304-ES16-4218 on case № A46-13473/2014, от 31.07.2015 по делу № 305-ES15-3229, A40-33319/14.

[172] Pakharukov A.A. Legal regime of requirements for residential premises transfer in developers' bankruptcy. Problems of state real estate registration. Materials of III scientific-practical. conf., resp. ed. A.A. Pakharukov. Irkutsk, 2018. P. 98.

[173] Blokhin M. Bankruptcy of a construction company: what should investors do? EZh-Yurist. 2017. № 9. P. 9.

It is necessary to emphasize here that current legislation provisions do not exclude apartment building creation through the reconstruction of an existing facility. This was pointed out by the Presidium of the Supreme Arbitration Court of the Russian Federation when considering the case of Rosreestr's refusal to register an agreement for participation in shared construction, which was concluded in connection with raising funds for the facility reconstruction (dormitory), the result of which was the creation of an apartment building with residential premises that did not exist in the property before its reconstruction[174]. Taking into account the result of the reconstruction, the Presidium of the Supreme Arbitration Court of the Russian Federation noted that funds during the reconstruction stage could be raised from citizens only in compliance with the provisions of Federal Law No. 214-FZ.

Thus, for the purposes of applying special provisions on the developer's bankruptcy in a bankruptcy case, it does not matter how (as a result of new construction, reconstruction) the corresponding object should have been built. It is the type of object that ultimately had to be put into operation by the developer that is decisive: apartment building, residential building of a blocked building or building (structure) intended exclusively for parking spaces.

Let us pay special attention to the fact that provisions of Part 2 of Art. 201.1 of the Bankruptcy Law expressly state that the rules established by § 7 are applied regardless of whether the developer has ownership, lease or sublease of the land plot, as well as ownership or other property rights to the construction project. In other words, the developer's possession of rights to the land and the construction site does not qualify for the purposes of applying special rules on developer's bankruptcy. In our opinion, this rule is completely justified, since it allows for protection using the mechanisms provided for in § 7 of Chapter. IX of the Bankruptcy Law, in cases of dishonest behavior of the developer at the stage of raising funds. Taking into account the above, one

[174] Resolution of the Presidium of the Supreme Arbitration Court of the Russian Federation dated 22.05.2012 № 17395/11 on case № A72-2981/2011.

can hardly agree with researchers who consider the absence in the definition of a developer for the purposes of applying § 7 of an indication of the presence of a "connection with the developed site" as a disadvantage[175].

At the same time, the legislator's reservation about the possible (acceptable) lack of ownership, lease or sublease of a land plot by the developer should not be interpreted as excluding the possibility of recognition as such in a bankruptcy case of a body who did not directly raise funds, but is the legal owner of the land plot and the building construction object[176]. As N.V. Guryanova fairly notes, a reverse interpretation of this norm would make the mechanisms of § 7 ineffective and not ensuring the achievement of the goal of developer's bankruptcy[177].

It is obvious that the body to whom the claims are made has rights to a land plot or construction project provides more effective protection of the interests of creditors than in a situation where funds were raised directly by the body who was actually an intermediary between the consumer of the goods (potential purchaser of the premises) and the body carrying out the construction. At the same time, Part 5 of Art. 201.1 of the Bankruptcy Law directly indicates that when considering claims, the arbitration court establishes the existence of these rights, including recognizing transactions concluded by construction participants with the developer and (or) with third parties acting in his interests as fraudulent. Taking this into account, law enforcers consistently turn to practice of invalidating "chains" of transactions, tearing away the "corporate veil" in order to establish requirements for premises transfer, monetary claims directly to the body who is the legal owner of the land and the construction project on it.

In fact, this began with the ruling issued by the Judicial Collegium for Economic Disputes of the Supreme Court of the Russian Federation dated August 22, 2016 in case No. A46-13473/2014. There the Judicial Collegium overturned the acts of the lower courts, which refused to apply developer's bankruptcy procedure against the

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[175] Grinyov V.P. Features of developers' bankruptcy (legal regulation, how to preserve your rights and legitimate interests). P. 549.
[176] Karelina S.A., Frolov I.V. Developer bankruptcy. Theory and practice of law enforcement. P. 64.
[177] Guryanova N.V. Features of developers' legal status. SPS «KonsultantPlyus».

debtor on the grounds that the debtor did not directly raise funds from the construction participants, and no agreements were concluded between these bodies. The Supreme Court of the Russian Federation pointed to courts formal approach to the case consideration, which does not take into account the purpose of legislative regulation of developers' bankruptcy procedure, which is to ensure "protection of construction participants from abuses of developers by manipulating legal schemes for raising funds."[178]. The case was returned for a new hearing: the courts had to evaluate the applicant's arguments about the sham of the transactions that were concluded with the participation of the debtor, his affiliates (including chains of transactions), in order to establish who was the actual beneficiary of construction participants funds. The courts should also have determined that the fact of introducing bankruptcy proceedings for the developer against the debtor would contribute to more effective protection of the rights of construction participants.

However, even in the presence of such a progressive legal position, clearly formulated by the Supreme Court of the Russian Federation, the maximum effectiveness of shared construction participants rights protecting cannot always ensure the maximum effectiveness of shared construction participants rights protecting: in specific cases, it may not be possible to determine the presence of signs of sham transactions concluded by participants in civil transactions, due to this, it will be impossible to accumulate the entire set of requirements for real estate transfer in the bankruptcy procedure of one debtor.

Practice knows cases when the claims of construction participants in relation to premises in the same construction project were presented to different entities, the bankruptcy of which was carried out within the framework of separate arbitration cases[179]. The transactions that each such body entered into with bodies who invested their

[178] Determination of the Judicial Collegium for Economic Disputes of the Supreme Court of the Russian Federation dated 22.08.2016 № 304-ES16-4218 on case № A46-13473/2014.
[179] Determination of the Arbitration Court of Moscow Region dated 01.04.2019 on case № A41-80758/17, dated 08.02.2017 on case № A41-60101/13.

money in construction in order to obtain ownership of the premises may not have signs of sham.

Thus, a land plot owner enters into a general contract for residential building construction with a third party. As payment for the work under the contract performance, the contract provides for the ownership transfer of premises part after the house is put into operation. In turn, the general contractor can attract subcontractors on similar terms to perform the work. In this case, each of these bodies will subsequently attract funds from participants in the turnover towards the future premises ownership transfer, the rights to which are due to them under the general contract/subcontract (remain at the disposal of the land plot legal owner). Although such situations are excluded if the developer, general contractor, and subcontractors behave in good faith, since they must be regulated by the provisions of Federal Law No. 214-FZ, they are not only acceptable, but continue to occur in practice[180]. Unfortunately, even with the tightening of the norms of Law No. 214-FZ[181], and the liability for its violation, there is no reason to assert that raising funds from construction participants in circumvention of its provisions is a thing of the past[182], such schemes are still used today.

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[180] Anisimov K.V. Developer bankruptcy. How to get your requirements included in the register. Arbitrazhnaya praktika. 2013. № 3. Bodikova M.A., Simanovich L.N. Some issues of developer liability in shared construction bankruptcy. Economics. Education. Right. Scientific research of modern society state and development. Collection of scientific articles based on materials of the II annual international scientific-practical conf., ed. A. A. Vashchenko. Volgograd: IP A.N. Vashchenko, 2017. P. 319; Kalashnikov M.I. Implementation of unauthorized construction by the developer - illegal construction of residential and non-residential premises. P. 89–95;Pavlenko O.V., Zimneva S.V. Criminal liability for legal requirements violation on shared construction participation. Legal science and law enforcement practice. 2017. № 1 (39). P. 69.

[181] Grebtsova N.A. Kulik T.Yu. Peculiarities of equity participation legal regulation in apartment buildings construction. Intellectual resources for regional development. 2017. № 1–2. P. 248.

[182] Bichkov A. Protection from an unscrupulous developer. EZh-Yurist. 2013. № 48.; Dyakonov R.G. On the issue of some problems of participation in shared construction. Vestn. Moscow Humanitarian-Economy institute. 2015. № 2; Dyagilev A. Shareholders-disputants. EZh-Yurist. 2007. № 18; Kail A. N. Shareholders. Housing law. 2012. № 9; Lazukin M. Share participation in construction. How to avoid being scammed when buying an apartment in a building under construction. Housing law. 2012. № 9; Medvedev A. Three deceptions in shared construction: causes and consequences. Current problems of civil law. Collection of scientific art., resp. ed. V.N. Suslikov. Kursk. 2014; Oleinikova O. Complex real estate purchase and sale schemes: dispute practice. Housing law. 2014. № 12.

We believe that with strict adherence to the provisions of Law No. 214-FZ, taking into account the provided control mechanisms, methods of ensuring shared construction participants rights, developers should not find themselves in a state that meets the criteria of bankruptcy. After all, the very presence of the provisions of § 7 in the Law is largely due to the existence of unscrupulous construction participants in the market.

An almost textbook example of the situation described is the case of Metcom v. Sibstroy[183]. When considering their dispute, the Supreme Arbitration Court of the Russian Federation qualified the agreement between the general contractor and the subcontractor as an assignment of rights from the contract with the customer and thereby allowed the subcontractor to claim participation in the customer's bankruptcy case with the presentation of appropriate claims. However, the application to the relations of the parties of the rules on changing bodies in an obligation (Articles 382, 384 of the Civil Code of the Russian Federation), was rather a solution to which the highest court was forced to resort to resolve the dispute in accordance with the general principles of civil law, and not a legal position, based on the literal content of the legal relations of the parties. Besides, creditor's ability to use in the case the chosen method of protecting his rights was ensured by the fact that the construction project for which he claimed the premises was available in kind and was registered in the cadastral register. The creditor actually owned the disputed object and claimed to have proprietary rights to it. A few years later, when considering a case with similar factual circumstances, the Judicial Collegium for Economic Disputes of the Supreme Court of the Russian Federation gave a similar qualification to the agreement concluded by a contractor with an individual for the transfer of rights to an apartment, recognizing it as an agreement for the assignment of rights to the developer that the contractor who entered into the agreement had (determination dated 07.05 .2018 No. 306-ES15-3282).

Despite the fair essence of this conclusion, it was repeatedly criticized due to the lack of legal grounds in the case for the assignment provisions application. In practice,

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[183] The Supreme Arbitration Court of the Russian Federation Presidium Resolution dated 11.03.2014 № 16768/13.

this approach has not been widely used also, which makes the position of the ultimate copyright holders who want to be included in the register of a single deptor (common for all creditors who have claims for the transfer of premises in one construction project) extremely vulnerable. Moreover, in cases where each of such debtors goes bankrupt with the provisions of § 7 applied to the bankruptcy procedure, the refusal to include residential premises transfer requirement in the register of creditors claims to the debtor with whom the construction participant did not enter into contractual relations (for example, he concluded an agreement with contractor, and an application was submitted to include him in developer's creditors register), the court additionally motivates by the fact that in relation to another debtor (\whom the participant is in a contractual relationship with), the rules on bankruptcy of the developer also apply, accordingly, the construction participant is not deprived of the opportunity to protect his rights as a priority within bankruptcy procedure framework of such a debtor[184].

It is obvious that with a plurality of independent debtors, the possibility of effective bodies who have rights to claim premises in one facility rights protection will be extremely small. In any case, it is not possible to achieve the goal of completing the construction of the facility in accordance with the special procedures provided for by the Bankruptcy Law, i.e., satisfying claims by transferring apartments ownership in the completed facility to participants who are creditors of different debtors, taking into account the current standards. In this regard, we consider it reasonable to turn to the concepts of plurality of bodies on the debtor's side being developed in foreign legal orders.

The model adopted in Russian legislation does not allow multiple debtors in a bankruptcy case[185]. The insolvency legal relationship is "a single protective obligation with an active plurality of bodies, where there are several creditors on one side and one

[184] Determination of the Arbitration Court of Moscow Region dated 01.04.2019 on case № A41-80758/17.
[185] Insolvency (bankruptcy): ed. by S.A. Karelina. V1. P. 287.

debtor on the other"[186]. According to the general rule in force in foreign countries, we are also talking about the unity of the subject on debtor's side. However, it is possible to recognize as insolvent business associations (groups) as associations that do not have a legal entity status, but act in circulation as an organizationally and property-wise single economic entity[187]. Let's look at this model using American practice as an example.

Providing for the possibility of multiple bodies on the debtor's side, American law distinguishes between procedural and substantive consolidation[188]. Procedural consolidation is possible when two or more bankruptcy petitions are filed in one court against one debtor, when two or more bankruptcy petitions are filed in one court by two or more related debtors (spouses, partners)[189]. Cases of material consolidation application are much more diverse, each has its own characteristics determined by the circumstances of a particular case, but they can still be classified as follows.

1. Joint bankruptcy cases of an actually insolvent debtor and property companies that are part of the same group. Moreover, such companies may not have bankruptcy signs at the time substantive consolidation is applied to them. Likewise, consolidation is possible regardless of what reasons made the basis for the formation within a group of independent organizations in which the property of the business association was concentrated. This could be the result of illegal actions (when property was withdrawn in order to hide it from creditors), i.e., there is debtor's dishonest behavior, the creation of organizations that represent a "corporate pocket"[190]. Consolidation may be a consequence of business structuring, when the group, simultaneously with companies that

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[186] Smirnov R.G. Nature of legal relationship of insolvency (bankruptcy). Dis. ...cand. of legal science. St. Petersburg, 2004. P. 53.

[187] Bankruptcy of business entities. resp. ed. I.V. Yershova, Ye.E. Yenkova. Moscow, 2016. p. 44.

[188] Alekseeva Ye.Yu. On development of the American bankruptcy model and its possible potential (in context of Russian legislation reforming). Vestn. grazhdanskogo protsessa. 2016. №4.

[189] Semikova L.E. The institution of substantive consolidation in the USA as a model of material consolidation in bankruptcy. 2011. № 1. P. 163.

[190] Semikova L.E.The institution of substantive consolidation in the USA as a model of material consolidation in bankruptcy. P. 165.

own property but do not conduct business on their own behalf, creates operating companies for the direct implementation of business activities, which are actually instruments of the parent company[191].

2. Cases where consolidation justification is the mixing of companies activities. As a result of such confusion ("material identity"), it is difficult and unreasonably expensive to determine what property belongs to each of the companies, what its obligations are, and this makes it impossible to establish the financial condition of each of the debtor companies.

3. Cases in which a group of companies was perceived by creditors as a single economic entity. When entering into relationships with them, creditors relied on the corporate creditworthiness of the group, rather than the individual with whom each of them entered into a legal relationship.

4. Cases with inter-group guarantees, when group members guarantee the fulfillment of obligations by organizations that are part of it (act as guarantors, mortgagors of property to ensure the fulfillment of obligations of bodies associated with them). In essence, when applying consolidation under these circumstances, a choice is made in favor of one group of creditors as opposed to the interests of those who secured their rights with a "network" of received guarantees. Since during consolidation all creditors can oppose their claims to total property of the group's enterprises, more prudent creditors will not be able to receive privileges in the form of an exclusive opportunity to claim the property of each organization of such a combination.

Material consolidation within bankruptcy case framework allows to achieve the following positive results:

availability of property for creditors. In this case, illegal actions to withdraw property from companies with accounts payable do not have the corresponding effect;

full responsibility of the owner (beneficiary) of a group of enterprises with all assets participating in the group's activities. The group structure of doing business,

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[191] Semikova L.E. The institution of substantive consolidation in the USA as a model of material consolidation in bankruptcy. P. 165-166.

which is often based on the goal of maximizing the profitability of the entire association with acceptable unprofitability of individual companies, does not allow, during consolidation, to shift to creditors the adverse consequences in the form of the inability to obtain performance from a specific counterparty. At the same time, the business owner bears the risk of losing all components of the business activity he carries out in the relevant area. Moreover, the literature also suggests that the introduction of the possibility of bankruptcy of business groups will increase the liability of bodies controlling the debtor, not only due to the fact that the business as a whole will be subject to bankruptcy proceedings. In this institution, supporters of this position see an auxiliary means for the mechanism provided by law for bringing bodies controlling the debtor to subsidiary liability[192];

reasonable competitive control. Material consolidation of bankruptcy cases does not allow interdependent creditors to exercise control over the bankruptcy procedure by establishing claims in related procedures based on relationships within the group;

increasing the procedural efficiency of bankruptcy proceedings. Consolidation of bankruptcy cases of several interrelated debtors frees them from establishing their intergroup claims and allows one-time consideration (within the framework of the consolidated case) of a claim against the group enterprises that has a common basis of origin.

It should be noted that the idea of using consolidation is not new for the Russian legislator. The possibility of plurality of bodies on the debtor's side, the actual presence of signs of conditional plurality in the current legislation and law enforcement practice is substantiated in the literature[193]. Besides, in 2011, the Ministry of Economic Development of the Russian Federation prepared Federal Law draft "On Amendments to

[192] Goryaev N.Yu. Trend in legislation development in business groups insolvency (bankruptcy). Institute of insolvency (bankruptcy) in the legal system of Russia and foreign countries: theory and practice of law enforcement. Resp. ed. S.A. Karelina, I.V. Frolov. Moscow. P. 135.

[193] Gromov D.V. Plurality of persons on the debtor's side in insolvency (bankruptcy) cases: analysis of legal structures. Institute of insolvency (bankruptcy) in the legal system of Russia and foreign countries: theory and practice of law enforcement. Resp. ed. S.A. Karelina, I.V. Frolov; Shishmareva T.P. Legal regulation of developer insolvency. Laws of Russia: experience, analysis, practice. 2016. № 3. P. 50–54.

Certain Legislative Acts of the Russian Federation Regarding the Establishment of Entrepreneurial Groups Bankruptcy Peculiarities." Unlike foreign legal systems, where consolidation appeared as means of protection against illegal transactions, as a measure to counter the evasion of responsibility by managers who control shareholders, this project was aimed at protecting the debtor's interests, a group of companies that want to go bankrupt as a single business[194]. Moreover, the project involved procedural coordination with a minimal degree of substantive consolidation. But even in this edition, the project was greeted with great caution by the judicial and scientific communities[195]. The opinion that the use of material consolidation was premature was due, among other things, to the lack of proper elaboration of this institution at the international level[196].

Based on the results of project consideration, the Council under the President of the Russian Federation for the Codification and Improvement of Civil Legislation gave a negative opinion. In addition to the uncertainty in a number of legal issues (jurisdiction, identification of members of the business group), the Council pointed out the inevitability of negative economic consequences from the implementation of the proposed provisions, "since you will be drawn into bankruptcy as debtors (with all the ensuing consequences) economically prosperous business entities[197]".

It is difficult to disagree with the fact that, despite all the attractiveness of the material consolidation noted positive aspects, its use can cause significant negative consequences. The obvious result of a merger is the actual redistribution of property (bankruptcy estate) in favor of some creditors, contrary to the interests of others. In addition, this approach is clearly unfair in relation to the interests of prudent creditors who in good faith, reasonably assessed the solvency of a particular body when entering

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[194] Feklyunin S., Zaitsev O. The Supreme Arbitration Court is in no hurry to bankrupt business groups //URL: http://rapsinews.ru/judicial_analyst/20110621/253261229.html (application date 17.02.2021).

[195] Karelina S.A. Development of legislation on insolvency (bankruptcy) of an entrepreneurial group. Izvestiya of the South-West State university. Ser. History and law. 2011. № 1. P. 39.

[196] Explanatory note to federal law draft "On amendments to Federal Law "On Insolvency (Bankruptcy) in terms of establishing the features of bankruptcy of business groups" // URL: http:/www.rg.ru/2011/12/16/bankrot-site-dok.html (application date 22.08.2019).

[197] URL: http://privlaw.ru/wp-content/uploads/2015/11/29_03_10_1.pdf (application date 22.08.2019).

into a relationship with him[198]. And even in foreign legal orders, the institution in question is used with great caution, in limited cases, since it threatens one of the basic principles of civil circulation - a legal entity isolation [199].

In favor of the unjustified inclusion of rules on bankruptcy of a business group in Russian legislation, there are arguments about the presence of judicial system effective mechanisms disposal for solving problems for which this institution is used in foreign legal orders. Thus, the Bankruptcy Law contains a special chapter III.1, whose rules govern challenging the debtors' transactions. The provisions of its chapter III.2 make it possible to hold bodies controlling the debtor accountable. Although the literature indicates an imbalance in the legal regulation of the procedure, the grounds for bringing the debtor's participants to subsidiary liability (lack of balance of debtor's participants' interests and insolvency legal relations subjects)[200]. The noted norms are quite widely used in judicial practice. The counterbalance to the unlawful establishment of competitive control in bankruptcy cases[201] is the provisions of Art. 10 of the Civil Code of the Russian Federation, the sustainable practice of application of which is based on the legal position formulated by the highest judicial authorities[202].

However, with a general negative attitude towards the idea of using consolidation institution, especially material consolidation, procedural consolidation has in fact already become a part of Russian legal reality. Thus, the Plenum of the Supreme Court of the Russian Federation in paragraph 10 of Resolution No. 48 dated December 25,

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[198] Feklyunin S., Zaitsev O. The Supreme Arbitration Court is in no hurry to bankrupt business groups // URL: http://rapsinews.ru/judicial_analyst/20110621/253261229.html.

[199] Semikova L.E. The institution of substantive consolidation in the USA as a model of material consolidation in bankruptcy. Moscow. 160-198.

[200] Vernikova Ye.D. Interests conflict of business company participants- debtor and bankruptcy creditors. Current problems of insolvency (bankruptcy) institution, the view of young scientists: collection of art. Moscow, 2019. P. 49.

[201] For more details: Galkin S.S. Legal status of a debtor-legal entity in Russian bankruptcy legislation; abst. dis. ...cand. of legal science. Moscow, 2016

[202] Review of judicial practice in resolving disputes related to establishment in bankruptcy proceedings of claims of controlling debtor and bodies affiliated with it. Approved by the Presidium of the Supreme Court of the Russian Federation 01/29/2020; clause 4 of the Resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation dated December 23, 2010 No. 63 "On some issues related to application of Chapter III.1 of the Federal Law "On Insolvency (Bankruptcy)""; rulings of the Judicial Collegium for Economic Disputes of the Supreme Court of the Russian Federation dated May 26, 2017 No. 306-ES16-20056 (6), dated June 15, 2016 No. 308-ES16-1475.

2018 “On some issues related to formation peculiarities and bankruptcy estate distribution in citizens’ bankruptcy cases” indicated that in case when bankruptcy procedures are introduced in relation to both spouses,“for the purpose of procedural economy and to simplify the procedure for property sale, satisfying the claims of creditors, the court may consider merging two cases of spouses insolvency according to the rules of Art. 130 Arbitration Procedure Code of the Russian Federation. In this case, material consolidation should not occur, the financial manager separately maintains creditors' claims register for spouses general obligations, registers of creditors' claims for the personal obligations of each spouse; the amount received from personal property sale of one of the spouses cannot be used to pay off personal obligations - the relationship of the other spouse. Thus, in addition to the previously used consolidation into one proceeding of two or more cases of bankruptcy of one debtor (clause 7 of the already mentioned resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation dated June 22, 2012 No. 35), which in theory is also recognized as a case of procedural consolidation, the highest court agreed with the possibility of procedural consolidation with a plurality of bodies on the debtor’s side, and these provisions have already been applied in the practice of lower courts[203].

Taking into account the above circumstances and arguments, we agree that material consolidation is rather radical means; its consolidation in Russian legislation is clearly premature, as it can lead to extremely negative consequences. At the same time, procedural consolidation of several debtors’ bankruptcy cases is permissible to effectively protect the rights of construction participating citizens[204]. We believe that the issue of several debtors bankruptcy merging possibility, to whom the rules on bankruptcy of developers apply, should be resolved in a resolution of the Plenum of the Supreme Court of the Russian Federation. Taking into account the fact that Part 2 of Art. 201.7 of

[203] Resolution of the Arbitration Court of the West Siberian District dated 30.04.2019 on case № A27-21218/2017.

[204] See Slavich M.A. The developer as a subject of insolvency (bankruptcy). Business, Management and Law. 2019. № 3. P. 73-74; Slavich M.A. Plurality of persons on the debtor’s side in cases of insolvency (bankruptcy) of developers. Lawyer. 2021. № 5. P. 37-42.

the Bankruptcy Law establishes the rule on maintaining construction participants claims register in relation to each construction project; for cases of such a merger, provision should be made for maintaining a single construction participants claims register of all debtors in relation to each construction project, separate registers of creditors' claims of each debtor. For the purposes of applying the provisions of Art. 201.10, 201.11 of the Bankruptcy Law, settlement of the developer's obligations to construction participants in the manner prescribed by the provisions of Art. 201.15-1, art. 201.15-2, it is necessary to consolidate the rule on maintaining unified registers of construction participants' claims for the corresponding construction project. The creditors' claims of the first, second, fourth priority, and other claims to be satisfied in a bankruptcy case must be satisfied in the order of priority set by the provisions of the Bankruptcy Law, with the features established by§ 7 norms , exclusively at the expense of the debtor's property, in the register of requirements of which they are included. Thus, the analysis carried out in this paragraph allowed us to come to the following conclusions.

The developer concept definition requires clarification, since its literal content conflicts with other norms of the Bankruptcy Law § 7 Ch. IX. The definition must include an indication that besides the requirement for residential premises transfer or a monetary claim against a body that special rules on developer's bankruptcy may be applied to, there may also be requirements for parking spaces and non-residential premises transfer.

Construction participants who have demands on developer to transfer residential premises ownership, parking spaces, or non-residential premises to them should be given the right to apply to an arbitration court with an application to declare such a developer insolvent (bankrupt) without preliminary transformation of their claims into monetary ones.

In order to increase the effectiveness of citizens participating in construction in debtors' bankruptcy cases rights protection, the activities result of which was the creation of common construction projects, if construction participants have claims against such debtors in relation to identical construction projects, we propose to consolidate

(in the resolution of the Plenum of the Supreme Court of the Russian Federation) the possibility of merging bankruptcy cases of these debtors at governing clarifications level.

§ 3. Legal status of the construction participant in developer's insolvency (bankruptcy) case

One of the main subjects of developer's bankruptcy case (in addition to the debtor himself) is the construction participant. Taking into account the purpose the Bankruptcy Law § 7 ch. IX provisions application its place among creditors as first among equals is beyond doubt[205].

The literature fairly notes that construction participant status in a developer's bankruptcy case does not coincide with creditor's status in a bankruptcy case.[206] According to Art. 34 of the Bankruptcy Law, the bodies participating in the bankruptcy case include bankruptcy creditors, which include creditors for monetary obligations (except for the cases specified in Article 2 of the Bankruptcy Law). Meanwhile, the legal definition of a construction participant concept contained in subparagraph. 2 p. 1 art. 201.1 of the Bankruptcy Law shows that these bodies include:

1) individuals who have a claim to the developer for residential premises transfer, a claim for parking space and non-residential premises transfer or a monetary claim;

2) The Russian Federation, a subject of the Russian Federation, a municipal entity that has a requirement for a developer to residential premises transfer or a monetary requirement.

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[205] Feronov A.S. Peculiarities of legal requirements of shareholder creditors to developer. Civil legislation of the Russian Federation: current state, trends and development prospects. Collection of art. of II International scient.-pract. conf. Krasnodar: Research Institute of Modern Law Current Problems. 2017.P. 196.

[206] Dorokhina Ye.G. Legal status of construction participants in developers' bankruptcy. Law. 2013. № 7. P. 120; Shishmareva T.P. Legal regulation of developer insolvency. Laws of Russia: experience, analysis, practice. 2016. № 10. P. 63.

Thus, the construction participant may not have a monetary claim against the debtor. Therefore, as E.G. Dorokhina correctly writes bringing the status of a construction participant closer to the status of a bankruptcy creditor (partial coincidence with this status) is possible only by transforming his demand for premises/parking space transfer into a monetary claim[207]. At the same time, the doctrine also notes that any creditors can be classified as bankruptcy, since in a broad sense the competition (to satisfy the claims against the debtor right) is held between all creditors of the debtor[208]. With this approach, construction participants, as debtor's creditors, are unconditionally included in the bankruptcy proceedings. However, for the purposes of applying the Bankruptcy Law, one should be guided by given relevant concepts definitions content, and therefore the opinion according to which construction participants belong to a special creditors' category in a developer's bankruptcy case is most correct[209].

The most significant change to the list of construction participants, precisely from the circle of bodies who may be participants in developer's bankruptcy case point of view, was made by Federal Law No. 151-FZ, which excluded legal entities from this list (subparagraph "a", paragraph 2, article 4). This decision seems completely justified. Since the deviation from the basic principle of bankruptcy legislation within the framework of § 7 was made for the purpose of ensuring the protection of citizens constitutional right to housing, the presence in the "preferential" category of creditors of legal entities even with similar requirements (for residential premises transfer) was more than unjustified. It should also be noted that the legislator moved towards this change gradually and deliberately.

Thus, Federal Law No. 218-FZ dated July 29, 2017, when amending the provisions of § 7 Ch. IX Bankruptcy Law Art. 201.1. added. subsection 2.1, which provides the definition of shared construction participant. Bodies in this category have essentially become

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[207] Dorokhina Ye.G. Legal status of construction participants in developers' bankruptcy. Law. 2013. № 7.
[208] Bankruptcy of business entities. resp. ed. I.V. Yershova, Ye.E. Yenkova. Moscow, 2016. P. 55–56.
[209] Insolvency (bankruptcy): 2 V, ed. by S.A. Karelina.V. 2. P. 252.

a certain “subspecies” of construction participants - citizens who, along with the characteristics listed in subparagraph. 2 p. 1 art. 201.1, additionally had to meet the following criteria:

their requirements for the developer are based on an agreement for shared construction participation concluded in accordance with the law requirements;

the developer has made mandatory deductions (contributions) to the compensation fund.

Public law company “Territory Development Fund”was also included among shared construction participants, whose requirements for the developer are based on agreements for shared construction participation, concluded in accordance with the provisions of Art. 201.8-1 of the Bankruptcy Law, or the rights under which were transferred to the Fund as a result of making payments in accordance with the provisions of the Bankruptcy Law.

Federal Law No. 175-FZ dated July 1, 2018 included citizens who deposited funds into an escrow account for settlements under shared construction participation agreement as construction participants. At first glance, this novelty did not deserve special comments, since its appearance was caused by completely objective circumstances: bodies classified as shared construction participants in fact had a greater arsenal of ways to protect their rights due to the fact that they entered into contractual relations with developer in the new realities of Federal Law No. 214-FZ[210].

However, attention was drawn to the fact that legislator did not include among such participants all shareholders in respect of whom obligatory contributions were paid and who deposited funds into escrow accounts, but only citizens. At the same time, he did not make the obligation to pay deductions (contributions) to the compensation fund or raise funds using escrow accounts dependent on who acted as the developer’s counterparty under the shared construction participation agreement. The corresponding requirements, as changes were made to the provisions of Federal Law No. 214-FZ,

[210] Yulova Ye.S. New legislation on developers’ bankruptcy in creation of the Fund for construction participating citizens rights protection. Liberal democratic values. P. 4.

became mandatory for developers, regardless of who acted on the side of the shareholder (citizen, legal entity). Moreover, this approach was completely justified, since the rights and obligations under shared construction participation agreement were actively “involved” in civil circulation, their assignment is not uncommon and is even specifically regulated by Art. 11 of the Law. In this regard, at any stage, a citizen can become an agreement party, whose rights are subject to special protection, and therefore must be properly ensured. It can be assumed that, when formulating this definition, the legislator strictly adhered to the position of protecting non-professional investors who invested their money for the housing subsequent acquisition rights, since it was precisely for protection the interests of this category of creditors in Chapter. 9 of the Bankruptcy Law why § 7 was included.

This conclusion, in particular, was led by the Bankruptcy Law paragraph 2 of part 1 of Art. 201.12-1 provisions analysis. It stated the following: “A construction participant, who is a legal entity, has no requirements for residential premises transfer in the construction project, in respect of which the developer has paid mandatory contributions (contributions) to the Fund; the monetary claims of such a participant are satisfied as part of fourth stage." From the content of this norm it is followed that a legal entity that has concluded a share participation agreement in relation to residential premises does not have the right to claim it and has only a monetary claim against the bankrupt developer. In this case, the provisions of sub-clause 2 p. 1 art. 201.1 of the Law on Bankruptcy remained unchanged; construction participants continued to include individuals and legal entities, the Russian Federation, a constituent entity of the Russian Federation or a municipal entity that has a claim against the developer for residential premises transfer or a monetary claim.

In this regard, it was unclear what a legal entity-shareholder of a residential premises has the right to claim, what goal the legislator pursued when he excluded these entities from the number of participants in shared construction. A superficial analysis could lead to the conclusion that the lack of changes in the definition of a construction participant was a legislative error caused by haste and the lack of proper elaboration of the bankruptcy legislation. Or the developers, for the same subjective reason,

were inaccurate when formulating the new provisions of Art. 201.12-1 of the Bankruptcy Law and wanted to exclude legal entities from those who have the right to vote at a meeting of shared construction participants and decide the "fate" of a particular house.

However, when making adjustments to the Law in December 2018, the legislator not only left the provisions in question regarding the rights of legal entities unchanged, he clarified that the restriction of their rights does not apply to the Fund. Thus, he made it clear that he deliberately formulated these provisions and pursued a special goal, but he did not specify which one. Since there were no comments on this subject in the explanatory bills notes, one could only build one's own hypotheses about his true will. For example: the legislator deliberately deprived legal entities of the right to demand the residential premises transfer, placing their monetary claim in fourth place if they invested money in shared construction after July 2017 (i.e. after the appearance of the obligation to pay contributions to the Fund, the mechanism raising funds using escrow accounts), which means he believed that the problem of dishonesty among developers is particularly acute and the risk of investment in this area is very high. Thus, he removed such shareholders from the list of bodies who are provided with special protection, and fairly transferred the adverse consequences of such financial investments decisions on them[211].

Subsequent amendments made to the Bankruptcy Law by Federal Law No. 151-FZ of June 27, 2019 confirmed the stated conclusions validity: legal entities were excluded from the number of construction participants for the purposes of applying § 7 Ch. IX of the Bankruptcy Law. Moreover, when adopting Federal Law No. 202-FZ of July 13, 2020, the legislator established norms according to which, even in previously initiated cases of developers' bankruptcy, the construction participants claims register is subject to adjustment concidering the provisions of the current legislation. According to Part 6 of Art. 13 of this Law, if developer's bankruptcy was initiated before

[211] See Slavich M.A. New rules on bankruptcy of developers: content and prospects. Arbitration and civil process. 2019. № 10. P. 40-41.

01/01/2018 and on the day when Law provisions came into force the monitoring procedure was not completed, at the Fund's request in relation to such a developer (if there are signs of bankruptcy) a decision is made to declare the developer bankrupt and to open bankruptcy proceedings. In this case, the arbitration manager makes changes to construction participants claims register: he includes citizens' demands for the non-residential premises (up to 7 sq. m.) transfer and parking spaces into it and excludes from it legal entities' claims for residential premises transfer (Part 7 Art. 13).

In this issue development, it should be noted that under shared construction participation agreements rights are actively traded on the market: agreements are concluded on claim rights assignment, responsibilities under concluded agreements transfer [212], and during the construction period (before shared construction object transfer to a participant under transfer and acceptance certificate) such assignments can be made multiple times. Therefore, if the legislator intends to be consistent in his logic of special protection exclusively of shared construction participating citizens' rights, he must introduce rules into the current legislation that will not allow "bypassing" the Bankruptcy Law provisions regarding the refusal to protect legal entities rights to receive housing premises by concluding agreements for claim rights assignment under the DDU after application acceptance for declaring him bankrupt in relation to the developer. Such a barrier can be established by reinforcing a requirement to include information that an application for declaring him bankrupt has been accepted by the arbitration court against the developer in the assignment agreement, with the new shareholder retaining only the scope of rights that would an assignor possess in the bankruptcy case[213].

Let us clarify that the legislation contains provisions limiting the rights of a citizen shareholder who has acquired the right to claim under an agreement providing for

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[212] Verbina O.L. Rights of participants in shared housing construction in the Russian Federation: problems of implementation. Legal issues of real estate. 2014. № 1. P. 15–19; Monastirev M.M. On some issues of protecting developer's rights when assigning rights of claim under shared construction participation agreement (Part 1). Law and Economics. 2015. № 5.

[213] See Slavich M.A. New rules on bankruptcy of developers: content and prospects. Arbitration and civil process. 2019. № 10. P. 41.

residential premises transfer and (or) parking space and non-residential premises transfer from a legal entity, after the developer is declared bankrupt and bankruptcy proceedings are opened. The named individual does not have the right to receive compensation under such an agreement from the Fund (Part 3, Article 13 of Federal Law No. 218-FZ). However, this norm does not fully counteract the dishonest behavior of civil turnover relevant subjects.

Firstly, it provides restrictions for bodies who acquired the right to claim after the developer was declared bankrupt and bankruptcy proceedings were opened. However, from application acceptance date (initiation of bankruptcy proceedings) until its consideration on its merits, a sufficient period of time will pass for making concessions.

Secondly, these negative consequences will occur only if the Fund decides that financing unfinished construction projects completion with the payment of appropriate compensation to participating citizens is unreasonable. At the same time, when implementing special procedures according to the rules of Art. 201.10, 201.11, 201.15-1, 201.15-2 of the Bankruptcy Law, such individuals will have equal rights with other construction participants.

This provision seems unfounded, as it creates opportunities for turnover participants abuse. The proposed changes will make it possible to maintain the priority of protecting the right of bona fide citizens to obtain residential premises ownership and at the same time ensure the protection other creditors rights who will be able to claim satisfaction of their claims through residential premises sale by the bankrupt developer in respect of which contracts with legal entities bodies were concluded.

Also, the Bankruptcy Law in paragraph 7 of Art. 201.1 establishes the obligation of the builder from the date of initiation of bankruptcy proceedings until the date of declaring him bankrupt when concluding an agreement providing for residential premises transfer, and (or) an agreement providing for parking space and non-residential premises transfer, as well as accepting funds under previously concluded agreements providing for the transfer of these objects, inform in writing that bankruptcy proceedings have been initiated against him in advance. However, the same obligation is not established in relation to the parties on rights assignment agreement, obligations under

an agreement providing for residential premises, parking spaces, non-residential premises transfer.

Besides, the provisions of paragraph 8 of Art. 201.1 Bankruptcy Law can not be recognized as perfect. According to this norm, the determination on the introduction of external management, the decision to declare the debtor bankrupt and open bankruptcy proceedings against the developer are sent by the arbitration court to the bodies that carry out state registration of real estate and transactions rights, at the location of the developer's land plots . However, in this version, this norm does not allow for the control of the registering authority even in relation to the developer's obligation to fulfill clause 7 of Art. 201.1 of the Bankruptcy Law, since it does not provide for sending him a determination to accept an application to declare the debtor bankrupt.

Taking into account the above, we consider the following to be obligatory:

addition to Federal Law No. 214-FZ Art. 11 provisions indicating the relevant assignment agreement mandatory conditions;

reinforcing provisions on sending to the registration authority a determination to accept an application for declaring the debtor bankrupt in clause 8 of Art. 201.1 of the Bankruptcy Law;

establishing bodies who acquired claim rights against the developer after bankruptcy proceedings initiation' rights features in Art. 201.2 of the Bankruptcy Law. установление в ст. 201.2

The preferential position of construction participants among other creditors is due mainly to the priority of their claims over the claims of creditors not classified as current[214].

After the first two "standard" priorities in Art. 201.9 of the Bankruptcy Law a third priority is provided, which includes construction participants-citizens claims, as well as the Fund's claims that arose from it (passed to it) as a result of payments made

[214] Zaporoshchenko V. Features of protecting construction participants rights in developers' bankruptcy. Business, management and law. P. 74; Dirkova Ye.Yu. Defrauded shareholders will be able to get an unfinished house. Tax policy and practice. 2011. № 11 (107). P. 77.

in favor of citizens. At the same time, in this priority there are three unique "sub-priorities", and therefore we can say that in developer's bankruptcy case there are six priorities. However, based on the grounds for claims against the debtor emergence, the legislator combined them into four stages. He included the claims of other creditors to the fourth priority.

Since, within the issues under consideration framework, we are primarily interested in the scope of construction participating citizens' rights, which can be realized first, let us turn to their demands content, included in the third stage of debtor's creditors' claims register.

From the literal content of sub. 3 p. 1 art. 201.9 of the Bankruptcy Law provisions it follows that such debtor's obligations include only monetary claims of citizens. The content of this concept is disclosed in subsection 4 paragraphs 1 art. 201.1 of the Law. At the same time, there are no grounds for its broad interpretation. Thus, citizens participating in construction have advantages over other creditors in satisfying demands for the return of funds actually paid by them to the bankrupt developer, as well as for compensation for losses. Taking into account the established "sub-queues", the first group of claims (monetary claims) has priority over the second (claims for damages).

Meanwhile, quite often citizens have demands from a bankrupt developer to pay a penalty for violating the deadlines for transferring shared construction projects to them, and to apply other penalties [215]. Art. 201.9 of the Bankruptcy Law provisions analysis served as the basis for the conclusion that these claims are subject to satisfaction in the fourth place [216]. The Supreme Court of the Russian Federation, when considering this type of claim, also directly indicated that construction deadlines violation

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[215] Belousov V.N. Prospects for legislation development on developer's civil liability. Notary. 2013. № 7.

[216] Barabina M.P. The procedure for satisfying construction creditors-participants claims in developer's bankruptcy in relation to other bankruptcy creditors. Law and business: convergence of private and public law in business activities regulation] collection of articles of participants of the IV Annual International scientific-practical Conf., dedicated to the memory of Honored Lawyer of the Russian Federation, Savostyanova O.N. Mechanisms for protecting shared construction participants

penalty performs a compensatory function, is a financial sanction and cannot be repaid in priority order over the creditors' claims who are not construction participants, and is subject to separate accounting in the fourth stage of developer's creditors' claims register [217]. The lower courts came to the same conclusion [218]. In this regard, there should be no doubts here. However, when amending the norms of § 7 in 2019, the legislator added clause 7 of Art. 201.11 of the Bankruptcy Law on construction participants claims satisfaction by transferring residential premises, parking spaces, non-residential premises to them, the rule on satisfying the demands of construction participants for the collection of penalties (fines, penalties) and other financial sanctions in the third place. It seems that this norm not only contradicts the content of Art. 201.9 of the Bankruptcy Law, is inappropriate in the structure of Art. 201.11, but also introduces unreasonable, inexplicable privileges for construction participants, even considering the priority of their rights protection established § 7. The fact that is particularly puzzling, is when amending the Law on Bankruptcy in 2020, the legislator not only didn't eliminate this injustice, but also further clarified the provisions of the fourth paragraph of paragraph 7 of Art. 201.11, which indirectly confirmed his commitment to this peculiar legal position. The essence of the amendment is that construction participants demands for financial sanctions payment are satisfied in the third place, after the principal debt amount repayment and those due under clause 2.1 of Art. 126 of the Law on Bankruptcy on third-priority creditors' claims interest.

We believe that construction participants demands for the collection of financial sanctions should not have priority over the restoration of their property rights, i.e., before the repayment of claims for losses, which means it would be advisable to exclude this norm from clause 7 of Art. 201.11 Bankruptcy Law.

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rights in developer's bankruptcy: legislation and judicial practice. Russian justice, 2016. № 3.P. 30; Slastilina Yu.V., Soroka O.N. Consideration of disputes related to developers' bankruptcy. P. 39–43.

[217] Determination of the Judicial Collegium for Economic Disputes of the Supreme Court of the Russian Federation dated 03.10.2016 on case № 305-ES16-6006(2).

[218] Resolution of the Arbitration Court of Moscow District dated March 11, 2020 on case № A41-44403/2018., the Federal Antimonopoly Service of the West Siberian District dated 28.05.2012 on case № A46-1428/2010.

In our opinion, a construction participant right to transform a previously stated requirement, which has already received fairly wide recognition in law enforcement practice, deserves special attention.

It should be noted that demand form choice which a construction participant can be included in the register with (monetary or residential premises transfer) for a long time had not only legal, but also purely practical significance. A worng (in relation to a possible scenario for a particular developer bankruptcy procedure development) choice of the form of accounting for claims against the developer could have extremely negative consequences for the construction participant[219].

Thus, from the moment § 7 came into force until the changes in 2018, the construction participants demands for residential premises transfer were included in residential premises transfer claims register, and monetary claims were taken into account creditors' debtor's claims register. The presence of such a "double" register of requirements was actively criticized in the literature[220], since until 2013 (although there are also later judicial acts), the courts, as a rule, refused construction participants to satisfy applications to change their previously included in the register of creditors' claims for monetary claims to residential premises transfer claims and vice versa (on claims transfer of residential premises transfer into monetary ones)[221]. Such refusals were motivated by the fact that possibility of changing the requirement is not directly set by law, and that the applicant, by including his requirements in one of the debtor's registers,

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[219] See Slavich M.A. The legal nature of the transformation of the claim of a participant in shared construction in the case of insolvency (bankruptcy) of the developer. Business, Management and Law. 2023. № 1. P. 37-42.

[220] Markov P.A., Barkova L.A. Features of maintaining creditors' claims double register in developers' bankruptcy. Vestn. of arbitration practice. 2015. № 5 (60). P. 4–11; Markov P.A., Barkova L.A. On influence of law socialization on reforming legislation on developer's bankruptcy] Law and Economics. 2015. № 10. P. 27–32; Markov P.A. Features of maintaining claims double register in case of developers' bankruptcy. Law and business: convergence of private and public law in regulating business activities. P. 532–536.

[221] Kovaleva Yu. N. On transformation of shared construction participants requirements in cases of developer's bankruptcy. Essays on the latest cameralistics. 2021. № 1. P. 50.

has already exercised his opportunity to demand from the developer the restoration of violated rights[222].

However, in two successive resolutions adopted in 2013 (No. 15510/12 and 13239/12) The Presidium of the Supreme Arbitration Court of the Russian Federation formulated a legal position according to which the inclusion of construction participants' claims both in the register of creditors' claims and in the register of residential premises transfer claims pursues the same material and legal interest - obtaining adequate and proportionate satisfaction of requirements. In this regard, the right to choose the accounting form for the creditor's claim in developer's bankruptcy case belongs to construction participant. Therefore, the demand is subject to inclusion in one of the registers at participant's will, regardless of what demand (monetary or residential premises transfer) he has from a formal point of view at the time of applying to the arbitration court.

The designated legal approach has largely become the basis for changes in law enforcement practice on the concerned issue. Satisfying the construction participants' corresponding statements, the courts noted that they had the right to choose the recording form for their demands to developer and the possibility of changing it, as well as to achieve, by satisfying such a statement, the goals of applying § 7 Ch. IX of the Bankruptcy Law[223].

The changes that were made to the Bankruptcy Law in 2018 abolished the maintenance of residential premises transfer claims register, and all claims of construction participants are now subject to recording in construction participants claims register, which is an integral part of creditors' claims register. However, this does not free construction participants from choosing the recording form of their requirements and,

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[222] Resolution of the Federal Antimonopoly Service of the West Siberian District dated 16.12.2013 on case № A67-4252/2010, Resolution of the Arbitration Court of the Far Eastern District dated 15.12.2014 on case № A59-5933/2009.

[223] Determination of the Judicial Collegium for Economic Disputes of the Supreme Court of the Russian Federation dated 02/16/2023 No. 308-ES1817191(5), Resolution of the Arbitration Court of the North-Western District dated 08/11/2016 in case No. A21-1828/2009, Tenth Arbitration Court of Appeal dated 02/03/2014 case No. A41-7785/09.

accordingly, does not exclude the possibility of changing it. Changing the form of construction participant requirements recording of in judicial practice and scientific literature is called differently: reorganization[224], transformation, translation [225]. Although none of these terms is purely legal, they have become quite widespread in practice, and not only in cases of developers' insolvency (bankruptcy). The content of "transformation" concept is broad and multifaceted. Depending on the field of activity, transformation is understood as a wide variety of change processes, reorganization, transfiguration, change of something, both in the natural and technical (chemistry, physics, etc.), and in social and humanitarian (linguistics, economics, etc.) sciences[226]. In the Big Legal Dictionary, transformation is understood as one of the ways of transforming, reorganizing the norms of international law into norms of domestic law [227].

The word "transformation" comes from the Latin transformatio – transformation, transfiguration[228], therefore the use of the terms "transformation", "reorganization", "translation" as synonyms in relation to the phenomenon we are considering is quite justified.

In legal doctrine, the use of these concepts is quite widespread, but the term "transformation" was introduced into law enforcement practice only by the Judicial Collegium for Economic Disputes of the Supreme Court of the Russian Federation Resolution dated March 24, 2016 in case No. 305-ES15-15707 and was used in its Resolution dated August 18. 2016 in case No. 301-ES16-4180 (although previously was found in Supreme Arbitration Court of the Russian Federation judicial acts[229]).

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[224] Dorokhina Ye.G. Legal status of construction participants in developers' bankruptcy. P. 120; Shishmareva T.P. On converting non-monetary claims into monetary ones in insolvency (bankruptcy) procedures. P. 34.

[225] Karelina S.A., Erlikh M.E. Non-monetary creditors rights to participate in debtor's insolvency (bankruptcy) process. P. 3.

[226] Soviet encyclopedic dictionary. M.: Soviet Encyclopedia, 1985. P. 1342; Encyclopedic Dictionary. M: Great Soviet Encyclopedia, 1955. P. 424.

[227] Big legal dictionary. A.Ya. Sukharev, V.E. Krutskikh, A.Ya. Sukhareva. M. 2003. P. 602.

[228] Rosenthal's Dictionary of Linguistic Terms.

[229] See, for example: resolution of the Presidium of the Supreme Arbitration Court of the Russian Federation dated 06.06.2000 № 5995/99.

In these cases, the Supreme Court of the Russian Federation applied paragraph 34 of the Plenum Resolution of the Supreme Arbitration Court of the Russian Federation dated June 22, 2012 No. 35 "On some procedural issues related to the consideration of bankruptcy cases," which established the procedure for accounting for non-monetary claims of a property nature in bankruptcy proceedings. Here, the Supreme Arbitration Court of the Russian Federation used rather vague formulations, indicating that a non-monetary obligation of a property nature "is subject to a monetary valuation, the amount of which is indicated in the register". Perhaps such caution of the Supreme Arbitration Court of the Russian Federation was caused by the fact that in earlier decisions its Presidium had already expressed its opinion that not every change in non-monetary obligations to a monetary equivalent is a reorganization (transformation) of the original obligation into a monetary one[230]. In turn, the Supreme Court of the Russian Federation directly called such a process the transformation of non-monetary creditors' claims into monetary ones. Moreover, in cases of developer's insolvency (bankruptcy), this process often has the opposite nature - the monetary demands of construction participants are translated into demands for residential premises transfer.

In the normal course of civil circulation, its participants are free to choose the form of methods to protect their civil rights. Therefore, in cases established by law, if the obligated person violates the obligations assumed, the creditor has the right, at his own discretion, either to file a claim in court to force the debtor to fulfill the obligation in kind, or to terminate the legal relationship (terminate the contract) in court or out of court with recovery from the debtor of the damage caused losses. When a bankruptcy procedure is introduced in relation to the debtor, in which the consideration of the relevant non-monetary claims against the debtor in a lawsuit is excluded, the creditor has the right to count on the inclusion of his claim in the register of creditors of the debtor exclusively in monetary terms.

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[230] Resolutions of the Presidium of the Supreme Arbitration Court of the Russian Federation dated 06.06.2000 № 5995/99, dated 22.05.2001 № 7209/00.

According to V.V. Vitryansky, the transformation of any violated civil law obligation should and can be carried out exclusively at creditor's will[231]. Analyzing the meaning of the term "transformation", I.M. Shevchenko also notes that its appearance explains the possibility of a creditor (i.e., at his will) presenting transformed claims in their monetary equivalent within the framework of an insolvency (bankruptcy) case without the preliminary implementation of pre-trial or judicial procedures, as required by the normal course of civil circulation[232]. At the same time, the literal content, as well as the practice of applying paragraph 34 of the Resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation dated June 22, 2012 No. 35, suggests that the transformation of a non-monetary claim of a creditor into a monetary one at the stage of its consideration in a bankruptcy case is possible even without the will of the creditor himself to such transformation. The arbitration court, based on the results of consideration of the non-monetary claim initially stated by the creditor, applying the guidelines of the Plenum of the Supreme Arbitration Court of the Russian Federation, may include it in the register of claims of the debtor's creditors (if it is justified) in monetary equivalent.

The situation is similar with the consideration of a number of non-monetary claims in cases of developers' insolvency (bankruptcy). Thus, bodies who have entered into share participation agreements with the developer in relation to non-residential premises often apply to the arbitration court to include their claims in the claims register for residential premises transfer/ construction participants claims register. The arbitration court, understanding the substantive and legal interest of such a creditor in obtaining satisfaction from the debtor, and also taking into account the impossibility of applying by analogy the rules on the right of construction participants to present non-monetary claims, i.e. claims for residential premises transfer, includes the claims of

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[231] Vitryanskii V.V. New legislation on insolvency (bankruptcy). Economics and law. 1998. № 3. P. 39.
[232] Shevchenko I.M. Shevchenko I.M. On some issues of relationship between claim proceedings and proceedings to establish claims in bankruptcy cases. Arbitration disputes. 2019. № 4. P. 131–146.

these creditors in the fourth priority claims register of of a debtor-developer in monetary terms[233].

Researchers also talk about the possibility of transferring non-monetary claims against a debtor into monetary ones, regardless of the will of the parties to the obligation[234].

Thus, at the stage of consideration of the creditor's claim, the transformation of this claim can be carried out both at the will of the creditor and against his will. When a construction participant applies to change the form of accounting (transformation) of a requirement already entered into the relevant register, this transformation is carried out according to his will. The foregoing allows us to conclude that the presence of the creditor's will to transform his claim is not a mandatory sign of its transformation.

In the previously mentioned resolutions, the Presidium of the Supreme Arbitration Court of the Russian Federation, in addition to instructions on construction participant's freedom to choose the form of recording his claims in the register of the debtor's claims, noted that within the meaning of § 7 of Chapter IX of the Bankruptcy Law, the inclusion of creditors' claims in the register of claims for residential premises transfer is not another method of protection such creditors' rights, other than inclusion in the monetary register of creditors' claims. Thus, the Supreme Arbitration Court of the Russian Federation recognized that, regardless of construction participants requirements recording form, the use of both forms acts as a way to protect the rights of these bodies.

In general, the issue of the legal nature of the requirements of construction participants to the developer is debatable. Some scientists believe that the demand for the return of funds paid to the developer under a terminated contract (and therefore under

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[233] Determination of the Arbitration Court of the Chelyabinsk Region dated 05.06.2017 on case № A76-10623/2016.

[234] Rashchevsky E.S. Monetary obligation in external management procedure. Dis. ...cand. of legal science. Moscow, 2003. P. 30–31.

the contract, the termination of which the construction participant declared in the process of establishing a monetary claim) is aimed at losses compensation[235]. Others believe that since this requirement is devoid of the nature of a corresponding measure of liability (the debtor does not suffer an additional burden, but only returns to the party what was received from it under the contract), then it is a requirement to restore in the property sphere of the injured creditor the position that existed before the violation of the right[236]. According to the opinion of A.V. Egorov, the demand of a construction participant for the return of what was paid under the contract should be recognized as a demand for payment of the principal debt. He classifies the difference between the actual market value of the residential premises and the amount of money paid to the bankrupt developer under the contract as losses in the form of real damage[237]. E.V. Pivtsaev argues that the construction participant's demand for funds paid to the developer under the contract return is an independent method of protecting the right, not set in Art. 12 Civil Code of the Russian Federation[238].

One of the main features of civil rights protecting method, which most leading civil rights experts highlight, is corresponding measure focus on restoring the violated right (violation elimination)[239]. Sharing as an axiom the statement that the monetary demand of a construction participant and the demand for residential premises transfer pursue the same material and legal interest - obtaining coherent and proportionate satisfaction of the requirements, we cannot, however, agree that even in meaning § 7 ch. IX of the Bankruptcy Law, dealing with such claims is one and the same way of protecting his rights. Moreover, from a theoretical point of view, it is not entirely correct to identify residential premises transfer requirement (in fact, an order to perform an obligation in kind) with the requirement for recovery of what was paid under the contract (monetary compensation receipt), regardless of whether it is a claim for damages

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[235] Durnov A.S. Correlation of protective measures and measures of civil liability under apartment buildings shared construction participation agreement. Ros. scientific magazine. P. 256.
[236] Brusko B.S. Protection category in Russian competition law. Moscow, 2006. C. 128–129.
[237] Yegorov A.V. Bankruptcy of developer organizations. Vestn. Supreme Arbitration Court of the Russian Federation. 2007. № 4. P. 33.
[238] Pivtsaev Ye.V. Features of developers' insolvency (bankruptcy). Abst. dis. ...cand. of legal science. P. 44.
[239] Russian civil law: textbook: in 2 volumes, ed. E.A. Sukhanov. M., 2015. T. 2. P. 143; Civil law: textbook: in 3 volumes, ed. A.P. Sergeeva. M., 2008. V. 1. P. 545.

or a claim on principal debt payment.

Thus, by applying to claims accounting form change, the construction participant actually changes the previously chosen method of protecting their rights. Therefore, considering the transformation of claims as a universal concept (not applied exclusively to developers' insolvency (bankruptcy) cases), we consider it correct to distinguish between the process of claim transformation and the process of the corresponding creditor choosing a method of protecting their rights.

Thus, until the bankruptcy procedure is introduced in relation to the debtor, the creditor has the right, in the manner of claim proceedings, to contact the debtor with a non-monetary claim or to terminate (terminate) the contract with the recovery of losses from the debtor, i.e., convert his claim into a monetary equivalent. By virtue of Art. 301, Art. 450, Art. 450.1 of the Civil Code of the Russian Federation, termination of a contract is possible in connection with the unilateral refusal of one of the parties to perform it out of court, which means that the creditor in specific legal relations has legal means to transfer his claim into money without the appropriate judicial procedure. This choice of method for protecting civil rights in science is called transformative power[240] and, in our opinion, is not covered by transformation categories.

B.S. Brusco considers the implementation of this power - the transformative requirement - to be an independent way of protecting the rights and interests of creditors under non-monetary obligations in bankruptcy law, which aims to obtain the status of competition capable entity for the creditor[241]. While not agreeing with this position, we consider the opinion of M.V.. Telyukina, who notes that a non-monetary creditor for participation in competitive relations can express its demands in monetary form, acting in accordance with the norms of the law or contract to be more justified. He may, among other things, withdraw from the contract and demand compensation for damages.[242]. Therefore, when converting his non-monetary claim into a monetary one, the creditor uses the generally accepted methods of protecting civil rights at his disposal

[240] Agarkov M.M. Obligation under Soviet civil law. Uchen. zap. VYuZI. Moscow, 1940. P. 72.
[241] Brusko B.S. Protection category in Russian competition law. P. 128–129.
[242] Telyukina M.V. Bankruptcy law: theory and practice of insolvency (bankruptcy). P. 158–159.

or a combination of such methods.

In any case, having at its disposal a certain set of ways to protect its rights, the creditor himself, before going to court, converts this claim into money. Therefore, the arbitration court considering an insolvency (bankruptcy) case does not need to transform the initially stated non-monetary claim into a monetary one. It only resolves the issue of the validity of the stated monetary claim and, based on its results, includes it in the appropriate queue of the register of creditors' claims or refuses such inclusion. If the creditor, at the time of filing an application to include his claim in the register of creditors' claims of the debtor, has not converted the non-monetary claim into a monetary one, the arbitration court will transform it and take it into account in the register of creditors' claims in monetary terms. Likewise, without a judicial act, it is impossible to transform the monetary claim of a construction participant into a claim for residential premises transfer. In other words, in order to transform claims, they must be recognized in appropriate forms (monetary or non-monetary) by the arbitration court.

When applying the legal position formulated in the already mentioned resolutions of the Presidium of the Supreme Arbitration Court of the Russian Federation in 2013, the arbitration court takes into account the requirements in the register of creditors' claims in the appropriate form, guided solely by the will of the construction participant, regardless of what claim he actually already has (if monetary claim in connection with DDU contract termination by a construction participant, his claim may be included in residential premises transfer claims register, i.e. taken into account in non-monetary form, and vice versa). That is, the arbitration court does not change the substance of the construction participant's actual claim, it only establishes the form of its accounting.

The situation is the same with non-monetary claims of creditors. In this regard, we share the position of V.A. Khimichev, who notes that any transformation of a non-monetary claim into a monetary one should not be considered as the basis for the emergence of a monetary obligation[243]. Applying the guiding clarifications of the Plenum of the Supreme Arbitration Court of the Russian Federation, given in paragraph 34 of

[243] Khimichev V.A. Protection of creditors' rights in bankruptcy. Moscow, 2005. P. 108–109.

Resolution No. 35 of June 22, 2020, the arbitration court also does not change the essence of the creditor's non-monetary claim, it only makes its monetary assessment, the results of which are indicated in the register, i.e., it takes into account the non-monetary claim creditor in cash.

In connection with the above, we believe that when clarifying the essence of transformation category, it is necessary to talk about a change as a result of such transformation of the form of accounting for the requirements of the relevant body (creditor, construction participant).

The analysis allowed us to formulate the following definition: transformation of a creditor's claim in an insolvency (bankruptcy) case is a change in the form of claim recording in the register of debtor's creditors claims, authorized by the arbitration court, carried out at the will or against the will of the authorized body.

Considering the transformation in competition law, including taking into account this definition, one cannot help but notice its similarity with the institution of changing the method and procedure for executing a judicial act, which is available in procedural legislation. In accordance with Part 1 of Art. 324 of the Arbitration Procedure Code of the Russian Federation, in the presence of circumstances that complicate the execution of a judicial act, the arbitration court that issued the writ of execution, at the request of the claimant, debtor or bailiff, has the right to postpone or defer the execution of the judicial act, change the method and procedure for its execution. Rules similar in essence are contained in Art. 203 Code of Civil Procedure of the Russian Federation, clause 1 art. 37 of the Federal Law "On Enforcement Proceedings".

In science, to define this institution, a conceptual apparatus similar to that discussed is used. Thus, a change in the method and order of a judicial act execution is understood as a change in the content of executive actions, in other words, their transformation or replacement[244]. S.A. Ivanova noted that "a change in the method of executing a decision may consist of replacing one type of execution with another or in a

[244] Arbitration Procedural Code of the Russian Federation. Sections III–VII: article-by-article scientific and practical. Comment, under general ed. V.A. Gureeva; scientific ed. V.V. Gushchin. Moscow, 2013. Issue. III–IV.

certain transformation that will occur with a change in the original method of executing a court decision[245]".

Let us consider the identified signs of claims transformation in insolvency (bankruptcy) cases in relation to changes in order and method of a judicial act execution.

A change in the procedure and method of execution of a judicial act can be carried out both at the will of the authorized body (at the request of the claimant), and against his will (at the request of the debtor or bailiff), but only on the basis of a judicial act. The implementation of the relevant provisions of procedural legislation and the Law on Enforcement Proceedings in Science is referred to as the annulling powers of the court[246].

Changing the method of a court decision enforcement does not create a new obligation. For example, when replacing an awarded performance in kind - an obligation to transfer goods to pay the cost of such goods, a new obligation (monetary) does not arise, only the performance type changes[247]. Allowing the inclusion in the register of creditors' claims of amounts ordered to a creditor in connection with a change in the judicial act execution procedure method or resolution of another body, the Plenum of the Supreme Arbitration Court of the Russian Federation did not fairly call them monetary obligations. By giving creditors under such claims the rights of bankruptcy creditors, he only extended the legal regime of monetary obligations to these "amounts"[248].

To change the method and procedure for the execution of a judicial act, it is necessary that there is already a decision, the execution of which in its original form is difficult. If the arbitration court hearing the debtor's bankruptcy case transforms the creditor's non-monetary claim into a monetary equivalent, the judicial act under which

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[245] Civil procedural legislation: Commentary, ed. M.K. Yukova. Moscow, 1991. P. 331.
[246] Neisalova A.A. "Canceling" powers of of first instance court in enforcement proceedings. Enforcement proceedings: procedural nature and civil principles. Collection of materials of Russian scient.-pract. conf., resp. ed. D.Kh. Valeev, M.Yu. Chelishev. Moscow. Statut, 2009.
[247] Resolutions of the Presidium of the Supreme Arbitration Court of the Russian Federation dated 06.06.2000 № 5995/99, dated 22.05.2001 № 7209/00.
[248] See: clause 1 of the resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation dated December 15, 2004 No. 29 "On some issues of the practice of applying the Federal Law "On Insolvency (Bankruptcy)".

execution was awarded in favor of the creditor may not exist. The situation is different in the case of transformation of the requirements of construction participants.

As fairly noted in the literature, the choice of requirement with which it is most appropriate for a construction participant to be included in the register depends on the circumstances of a particular developer's bankruptcy case[249]. If the developer has an unfinished construction project at his disposal, for which there is a prospect of completing construction and putting the facility into operation, it is most rational to submit a request for the transfer of residential premises to the register. If the construction project does not yet exist or the degree of its readiness is negligible, but there are other assets that make up the debtor's bankruptcy estate, through which the creditors' claims can be satisfied, it is advisable to submit monetary claims to the register.

However, during the bankruptcy process the situation may change. In addition, at the time the corresponding requirement is included in the register, the construction participant cannot always properly assess the correctness of the form he has chosen for recording his requirements, and at a certain stage he realizes that it will be difficult for him to obtain fulfillment of the requirement included in the register. Therefore, by applying to change the form of recording his claim in the register of claims of the debtor's creditors, the construction participant is actually asking to change the method and procedure for the execution of a judicial act previously adopted by the arbitration court - a ruling on the inclusion of his claim in the register of creditors' claims. We have already written above that, in fact, as a result of transformation, a change occurs in the previously chosen method of protecting the right. It seems that a similar approach is also valid when determining the essence of changes in the method and procedure for executing a judicial act. This also follows from judicial practice[250] and is noted in the scientific literature[251].

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[249] Kovaleva Yu. N. On transformation of shared construction participants requirements in cases of developer's bankruptcy. Essays on the latest cameralistics. P. 53.

[250] Determination of the Judicial Collegium for Economic Disputes of the Supreme Court of the Russian Federation dated April 15, 2015 in case No. A03-20581/2012, Resolution of the Presidium of the Supreme Arbitration Court of the Russian Federation dated December 25, 2012 No. 10562/12.

[251] Abushenko D.B. Problems of substantive law judicial acts and legal facts mutual influence in the civil process. Tver, 2013. SPS Consultant Plus.

The foregoing allows us to conclude that construction participant claim transformation in developer's insolvency (bankruptcy) case is a special case of method and procedure change in judicial act executing.

When analyzing the scope of rights of construction participants, it is advisable to consider the collateral status of these entities. The provisions of Federal Law No. 214-FZ, which provide for collateral security of claims under an equity participation agreement, have been repeatedly criticized[252]: Taking into account the current law enforcement practice, the existence of the shareholder's security rights in relation to the developer's property is beyond doubt. The only exceptions are those participants in shared construction who deposited funds using escrow accounts, since the provisions of Federal Law No. 214-FZ on securing the fulfillment of obligations under a contract with a pledge in this case are not subject to application (Part 1, Article 13, Part 4 Art. 15.4 of the Law). At the same time, as the Supreme Court of the Russian Federation rightly pointed out, «the collateral rights of equity holders, their essence and content, as well as the subject of the collateral itself are transformed as the construction stage of the facility progresses[253]»

The emergence of this right, the procedure, and the conditions for its transformation are regulated in Art. 13 of Federal Law No. 214-FZ, from which it follows that shareholder's security rights arise in three cases.

Case one: from the moment of agreement state registration, the land plot owned by the developer by ownership right, the right to lease or sublease, on which the construction project (apartment building, other real estate object) is to be erected, as well as the one being built on it, are considered to be pledged to the participants in shared construction land plot construction site.

Case two: an unfinished construction object is pledged in the case where, before the object construction completion, the developer registered its ownership. Registration

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[252] Kukin A.V., Pleshanova O.P. Defective pledge. Vestn. of econom. justice of the Russian Federation. 2018. № 7. P. 20–25; Pleshanova O.P. Developer bankruptcy: new rules for bank creditor. Bank lending. P. 43–58.

[253] Determination of the IC ES of the Supreme Court of the Russian Federation dated February 14, 2019 № 308-ES18-15980.

of unfinished construction project ownership in some cases is developer's right, who may be interested in this, for example, due to the presence of a corresponding requirement from the bank lending the construction. In other cases, namely when grounds arise for foreclosure on the collateral, the developer is obliged to carry out state registration of such right. If this obligation is not fulfilled, state registration of ownership of such an object is carried out on the basis of a court decision made on the claim of a participant in shared construction to foreclose on the subject of the pledge (Part 5 of Article 13 of the Law). Moreover, even before the corresponding object of unfinished construction is registered in the cadastral register and the registration of ownership, all potential participants in the turnover must be aware of the existence of construction participant claims for a lien encumbrance in relation to future real estate (an object not completed by construction) from the moment of registration of the share participation agreement in construction, since this fact is reflected in the public information resource (Unified State Register of Real Estate)[254].

Case three: the subject of lien rights arises from the construction participant from the date of putting the completed construction project into operation until the date of shared construction project transfer to the shareholder. Part 3 of Art. 13 of Federal Law No. 214-FZ states that "before the date of shared construction project transfer in the manner established by Art. 8 of this Federal Law, such a shared construction object is considered to be pledged to a shared construction participant." This allows us to conclude that construction participant has as pleged exactly that shared construction object, which, by virtue of the agreement concluded between him and the developer, is subject to ownership transfer.

Further, the article contains a disclaimer that residential and (or) non-residential premises that are part of apartment building data and (or) other real estate and are not shared construction objects are not considered to be pledged from the date the developer receives permission to put the object into operation. The content of this clarification considering the first sentence of Part 3 of Art. 13 of Federal Law No. 214-FZ

[254] Determination of the Investigative Committee of the Supreme Court of the Russian Federation dated July 2, 2018 in case № 305-ES16-10864(5).

suggests that the legislator specifically stipulated the fact that the right of pledge does not arise on residential building common property, the share in the right to which is subject to transfer to the participant simultaneously with the shared construction object with subsequent ownership registration (Part 5 of Article 16 of the Law), as well as for house premises that do not belong to such common property and are not the objects of concluded agreements for shared construction participation, that is, they are free from legal claims by any construction participants.

The Supreme Court of the Russian Federation considers these provisions taking into account the norms of paragraph 2 of Art. 345 Civil Code of the Russian Federation, clause 1, art. 65 of the Federal Law of July 16, 1998 No. 102-FZ "On Mortgage (Pledge of Real Estate)", indicating that in this case the right of pledge arises with the construction participant for all premises in the constructed building, with the exception of premises that are not objects of shared construction, as well as for premises already transferred to other construction participants[255]. In other words, the Court allows construction participants to have rights as co-mortgagors for shared construction projects that have not been transferred to them until they are transferred to the relevant shareholder. This conclusion seems not entirely correct to us. Besides, considering the further content of the Determination dated February 14, 2019 No. 308-ES18-15980, we can conclude that after the developer receives permission to put a residential building into operation, the shareholder should only have as pleged the premises that were the object of shared construction under the agreement.

When analyzing the pledge rights of a construction participant, in addition to their subject matter, it is important to study the procedure for securing the claims of construction participants as secured by a pledge within bankruptcy case framework[256].

According to the general bankruptcy law, in order to establish its status as a secured creditor in a debtor's bankruptcy case, the creditor must expressly declare it.

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[255] Determination of the EC ES of the Supreme Court of the Russian Federation on February 14, 2019 No. 308-ES18-15980.

[256] See Slavich M.A. Replacing the developer: risks for the investor. Business, Management and Law. 2022. № 4. P. 47; Slavich M.A. Replacement of the developer: investor's assessment of the volume of obligations of the bankrupt developer. Legal Insight. 2023. № 4. P. 38.

These are the guiding clarifications that were given by the Plenum of the Supreme Arbitration Court of the Russian Federation in Resolution No. 58 dated July 23, 2009 “On some issues related to satisfying the claims of the mortgagee in the event of mortgagor’s bankruptcy.” When making their claims, the creditor may not refer to the existence of a collateral relationship, stating this later. Moreover, such an application is not repeated; it is considered by the court in the manner prescribed for establishing the claims of creditors. When a court makes a ruling establishing the existence of a right of pledge, it is the basis for making changes to the register of creditors' claims (clause 3 of the Resolution).

Particular attention should be paid to the fact that such a creditor has the right to apply for recognition of his status as a secured creditor no later than two months from the date of publication of information about declaring the debtor bankrupt and about the opening of bankruptcy proceedings (clause 1 of Article 142 of the Bankruptcy Law). Otherwise, he will not have special rights in a bankruptcy case that are granted to mortgagees (clause 3 of the Resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation dated July 23, 2009 No. 58).

§ 7 ch. IX regulations of the Bankruptcy Law does not contain provisions on the procedure for establishing the pledge status of a creditor in a developer’s bankruptcy case. But its features are formulated by the highest court.

Thus, a shareholder who entered into an agreement for shared construction participation of non-residential premises with a developer who later became bankrupt asked to include his monetary claim in the fourth line of creditors’ claims register as secured by a pledge. The courts hearing the case included the shareholder's monetary claim in the fourth priority, but denied him a secured creditor status on the grounds that he was not a construction participant for the purposes of applying the rules on developer’s bankruptcy.

Reversing the judicial acts adopted in the case, the Supreme Court of the Russian Federation recognized such claims as secured by a pledge due to the fact that the pledge right of bodies who have entered into a shared construction participation agreement with a developer arises by virtue of Law No. 214-FZ provisions, which do not establish

differences between the legal status of shareholders depending on the type of premises that they were supposed to acquire as property during normal economic turnover (residential or non-residential). However, the most significant from the point of view of interpretation of the relevant norms of Federal Law No. 214-FZ and the provisions of § 7 Ch. IX of the Bankruptcy Law is the conclusion made by the Supreme Court of the Russian Federation that in developer's bankruptcy case, the claims of shareholders included in the register, based on registered agreements for participation in shared construction, are considered secured by a pledge, regardless of whether they declared the need to establish a pledge status upon presentation of monetary requirements or not. The only exceptions can be cases when such a creditor has clearly expressed his will to refuse the pledge or the court has directly indicated that the creditor does not have the right to pledge in a judicial act.[257].

At the same time, the Supreme Court of the Russian Federation clearly made this conclusion intentionally. In the case under consideration, the creditor insisted on establishing his claim as pledged. But when making its ruling, the Court especially emphasized that the presence of a creditor's statement about the pledge relationship is not significant. Creditors who have the appropriate status, but do not insist on having their claims taken into account as pledged, do not lose the right to pledge priority. They also have the right to count on the distribution of funds received from the sale of premises subject to transfer to them under the contract, according to the rules of Art. 201.14 of the Bankruptcy Law. Subsequently, the highest court confirmed this legal position almost word for word, eliminating any doubt that any creditor (individual, legal entity), whose rights of claim against a bankrupt developer are based on a registered agreement, has a right of lien on the premises that were to be transferred into his ownership in accordance with the terms of such an agreement, regardless of the type of premises (residential, non-residential)[258].

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[257] Determination of the IC ES of the Supreme Court of the Russian Federation dated February 14, 2019 № 308-ES18-15980.

[258] Determination of the EC ES of the Supreme Court of the Russian Federation dated 05/06/2019 № 302-ES18-24434.

It should be noted that the unconditional pledge status of construction participants was previously slightly mentioned in acts of the Supreme Court of the Russian Federation and lower authorities[259]. But this provision received such an unambiguous interpretation precisely in the Determination dated February 14, 2019, and therefore it was widely discussed in the literature[260].

The collateral status of a construction participant, as well as a creditor whose monetary claim is based on a shared participation agreement concluded in relation to non-residential premises, is not affected by the fact of its subsequent termination. In this regard, we consider the opinion of a number of researchers to be erroneous that upon termination of a shared participation agreement, the mortgage in favor of the construction participant is terminated[261]. The key here is to have the contract registered after its conclusion. The right of claim under an agreement that has not undergone the state registration procedure is subject to establishment in developer's bankruptcy case, but such a right will not be secured by a pledge[262]. In case where the contract was registered in the prescribed manner and subsequently terminated, which is also reflected in the Unified State Register of Real Estate, the rights to the corresponding collateral (considering the stage of facility construction) equally apply to the claims of construction participants (mortgagors) who refused to fulfill the contracts. The Supreme Court of the Russian Federation has repeatedly explained that in this case, the pledge secures their claim to developers for the return of the deposited funds[263]. However, when, after a participant's lawful refusal to fulfill the agreement in relation to this

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[259] Determination of the IC ES of the Supreme Court of the Russian Federation dated August 25, 2017 No. 307-ES16-20971; Resolution of the Arbitration Court of the Moscow District dated March 4, 2015 in case № A41-26777/2011.

[260] Nasonov A. Long-awaited judicial practice regarding claims status of shared construction of non-residential premises participant to a bankrupt developer//URL: https://zakon.ru/blog/2019/3/11/dolgozhdannaya_sudebnaya_praktika_kasatelno_statusa_trebovanij_uchastnika_dolevogo_stroitelstva_nezh (дата обращения 18.04.2020).

[261] Makarov A.S., Tsesarskaya T.A. Problems of legal regulation of developers' bankruptcy. Problems of real estate state registration; materials of III scientific-practical. conf., resp. ed. A.A. Pakharukov. Moscow. Moscow Acad. of economics and law, 2018. P. 86.

[262] Resolution of the Presidium of the Supreme Arbitration Court of the Russian Federation dated March 12, 2013 № 15510/12.

[263] Determinations of the EC EC of the Supreme Court of the Russian Federation dated February 14, 2019 № 308-ES18-15980, dated July 2, 2018 № 305-ES16-10864(5).

shared construction project, a new agreement was concluded, after the completion of the construction of the object, the apartment is transferred to the new participant free from the rights of the first participant, the ownership right of such a new participant is not encumbered by a mortgage in favor of the original shareholder[264].

The exception is cases when the contract with the next shareholder is concluded for an unlawful purpose by the developer, which is not to raise funds to complete the construction, but to deprive the first participant of security in the interests of the developer[265]. The principle of good faith of the parties is one of the fundamental principles in Russian civil legislation[266], no one has the right to take advantage of their illegal or dishonest behavior (Clause 4 of Article 1 of the Civil Code of the Russian Federation), however, if the actions of the parties to conclude a second agreement for shared construction participation are aimed at circumventing the provisions Federal Law No. 214-FZ on the grounds and moment of occurrence of a pledge (Article 10 of the Civil Code of the Russian Federation), at the time of registration of ownership rights, an unscrupulous subject will have a lien encumbrance in favor of the first construction participant[267].

In the bankruptcy procedure of any debtor, recognition of the creditor's claim as secured by a pledge is an unconditional privilege, since it allows satisfying his claims at the expense of the pledged property preferentially before other creditors. We note that the question of the right of mortgagees to satisfy their claims within the framework of bankruptcy proceedings is debatable. For example, M.V. Telyukina proposes to exclude secured creditors from the list of subjects of bankruptcy relations and consider

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[264] Determination of the EC ES of the Supreme Court of the Russian Federation dated July 2, 2018 № 305-ES16-10864(5).

[265] Determination of the IC ES of the Supreme Court of the Russian Federation dated April 16, 2018 № 305-ES16-10864.

[266] Bevzenko R.S., Yegorov A.V. Adaptation of contract to changed circumstances and parties' good faith. Collection of art. for the anniversary of V.V. Vitryansky, comp. S.V. Sarbash. Moscow. 2013. C. 8.

[267] Determination of the EC ES of the Supreme Court of the Russian Federation dated July 2, 2018 in case № 305-ES16-10864(5).

their claims outside the bankruptcy case[268]. However, satisfaction of the claims of mortgagees is carried out in bankruptcy cases today, including developers' bankruptcy cases.

The general procedure for distributing funds from pledged property sale is established in Art. 138 of the Bankruptcy Law. But in the event of construction project owned by the developer sale, and a land plot owned by him by ownership or other right (including lease, sublease), the funds are subject to distribution in the manner prescribed by Art. 201.14 Bankruptcy Law:

sixty percent is allocated to repay the creditors' claims under the obligation secured by a pledge, but no more than the debt principal amount under the obligation secured by a pledge and interest due, including claims on the obligation secured by a pledge under a shared construction participation agreement in accordance with the legislation on apartment buildings houses shared construction and (or) other real estate participation;

twenty-five percent is allocated to repay the monetary claims of construction participating citizens, regardless of whether these citizens are mortgagees in relation to unfinished construction projects and land plots being sold (including actual damage, except interest and other sanctions), as well as Fund requirements;

ten percent, if the developer's other property is insufficient, is used to pay off the claims of first- and second-priority creditors;

the remaining funds are used to pay off legal costs, expenses for paying remuneration to the bankruptcy trustee (external manager) and payment for the services of bodies engaged by the bankruptcy trustee (external manager) in order to ensure the fulfillment of the assigned duties.

Thus, in comparison with the general rules for satisfying secured creditors' claims, in Art. 201.14 of the Law:

the amount of interest payable directly to secured creditors has been changed;

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[268] Telyukina M.V. Fundamentals of bankruptcy law. Moscow. P. 186.

the amount of funds that can be spent to satisfy the claims of first and second priority creditors has been reduced;

an additional category of creditors who have the right to claim priority satisfaction of their claims through the sale of pledged property if they do not have the right to pledge it is provided.

It should be noted here that paragraph 3 of Art. 201.9 norm of the Bankruptcy Law, which regulates developer's bankruptcy case claims satisfaction order, is a reference; when satisfying the claims of creditors for obligations secured by pledge, it prescribes to follow the procedure established by Art. 201.14 of the Bankruptcy Law. This allows us to conclude that Art. 201.14 is special to Art. 201.9 and when distributing funds from pledged property sale, one should be guided solely by its provisions. However, such a conclusion is superficial and does not take into account developer's bankruptcy regulating specifics, the goals pursued by the application of § 7 of Chapter. IX of the Bankruptcy Law provisions. Thus, when considering a dispute between the bankruptcy trustee and creditors, the arbitration court came to the conclusion that, considering debtor-developer's bankruptcy legal regulation peculiarities and the legal position of the Supreme Arbitration Court of the Russian Federation Presidium on ensuring priority protection of the rights of citizens participating in construction as non-professional investors[269] Art. 201.14 of the Bankruptcy Law must be considered in conjunction with Art. 201.9, which provides for a general procedure for satisfying debtor developer creditors' claims[270].

We have already noted that Art. 201.9 of the Bankruptcy Law establishes four queues of creditors, while in the third queue there are some kind of sub-queues:

first of all, the claims of citizens to whom the debtor is liable for causing harm to life or health are satisfied, by capitalizing the corresponding time payments, compensation in excess of damages;

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[269] Resolution of the Presidium of the Supreme Arbitration Court of the Russian Federation dated April 23, 2013 № 14452/12.

[270] Resolutions of the Arbitration Court of the West Siberian District dated 05.21.2019, the Seventh Arbitration Court of Appeal dated 02.28.2019 in case № A03-5367/2016.

the second stage – settlements with bodies under employment contracts, for the payment of severance pay, remuneration to authors of intellectual activity results;

settlements in the third priority of creditors are made in the following order:

first of all - for the monetary claims of construction participating citizens, except for claims for losses compensation that are subject to payment in third place;

secondly - according to the requirements of the Fund that passed to it (arising from it) as a result of compensation payment to citizens;

in the third place - according to the monetary claims of citizens participating in construction for losses compensation in the form of actual damage established in accordance with clause 2 of Art. 201.5 of the Bankruptcy Law;

fourth stage – settlements with other creditors.

In the case we cited, it was precisely considering the established priority of construction participating citizens' demands that the courts approved the provision on funds distribution as amended by the bankruptcy trustee. According to this edition, construction participating citizens' claims, included in the third priority of creditors, were subject to satisfaction primarily before the claims of not only creditors of the fourth priority, but also legal entities whose monetary claims were included in the third priority. Thus, when considering the case, the courts formulated two noteworthy legal positions:

citizens participating in construction, as non-professional investors, have priority in the bankruptcy case of the developer to satisfy their claims, and therefore the presence of legal entities in the third stage, along with the demands of individuals, cannot change the priority order in the third stage for repayment of their claims;

the third-priority creditors claims are subject to satisfaction preferentially before the claims of fourth-priority creditors, even considering the latter's right of pledge.

Otherwise, the cassation court returned the case for reconsideration, in which the courts of the first and appellate instances approved the procedure for distributing funds

in proportion to the claims of third-priority creditors included in the register, without taking into account the provisions of Art. 201.9 Bankruptcy Law[271].

In both cases, the Supreme Court of the Russian Federation confirmed the lower courts conclusions legality on the cumulative application of Art. 201.9, art. 201.14 Bankruptcy Law provisions[272].

Let us recall that legal entities were excluded from the list of construction participants in 2019 by Federal Law No. 151-FZ. Consequently, their claims for the transfer of residential premises (monetary claims derived from them) are subject to inclusion in the third priority of the register of creditors in bankruptcy cases of developers initiated before the date of entry into force of the relevant changes. But even taking into account the changes in 2020, situations cannot be ruled out in which the provisions of paragraph 6 of Art. 13 of Federal Law No. 202-FZ dated 13.07.2020 will not be implemented (for example, the procedure was initiated before these changes were made, before this date settlements with third-priority creditors were started, at the time Federal Law No. 202-FZ came into force in relation to the developer bankruptcy proceedings have been opened), and construction participants claims register will contain legal entities claims. In this regard, the adjustments made by law enforcement practice to the priority of satisfying third-priority creditors claims are of significant importance.

An equally important role is played by the stated priority of satisfying the rights of the third-priority creditors secured by the pledge over the rights of the fourth-priority secured creditors. Formally, the provisions of sub. 1 clause 1 art. 201.14 of the Bankruptcy Law does not contain any indication of this kind of advantage. However, judicial acts in this part were not reviewed by the highest court also. This circumstance is also noteworthy because several years earlier the Supreme Court of the Russian Federation supported the opposite conclusions of lower courts. Cassation complaints of citizens participating in construction against judicial acts that denied the establishment of a preferential right to satisfy the claims of third-priority secured creditors over the rights

[271]Resolution of the Arbitration Court of the Moscow District dated November 25, 2019 in case № A40-244518/2015.
[272]Rulings of the Supreme Court of the Russian Federation dated 09/02/2019 № 304-ES17-16860(3), dated 03/20/2020 № 305-ES19-15538(3).

of fourth-priority secured creditors through the pledge sale were not submitted for consideration to the Judicial Collegium for Economic Disputes[273].

When considering this case, the courts, with reference to Art. 201.14 of the Bankruptcy Law indicated that this norm established the priority status of secured creditors over creditors whose claims are not secured by pledge. At the same time, the article provisions do not provide for an advantage in the repayment of claims secured by a pledge included in the third priority of creditors' claims register over claims included in the fourth priority of the register[274].

Thus, the courts applied the provisions of Art. 201.14 of the Bankruptcy Law without consideringt the provisions of Art. 201.9, which, even in the version in force during the case consideration, provided for four priorities in debtor-developer creditors' claims register, but without identifying "sub-priorities" as part of the third priority.

All of the above allowed us to come to the following conclusion. For uniform application of the provisions of Art. 201.14 of the Bankruptcy Law, taking into account the purpose of special legal regulation of bankruptcy procedures for developers, it is necessary at the level of guiding explanations (in the resolution of the Plenum of the Supreme Court of the Russian Federation, a review of judicial practice) to establish the following procedure for applying sub-clause. 1 clause 1 art. 201.14 of the Bankruptcy Law in conjunction with the norm of Art. 201.9.

When selling the corresponding pledged property, from the amount to be distributed among creditors, sixty percent is used to repay the creditors' claims under the obligation secured by the pledge, but not more than the principal amount of debt under the obligation secured by the pledge and interest due, including claims on the obligation secured by the pledge under the participation agreement in shared construction in accordance with the legislation on participation in shared construction of apartment buildings and (or) other real estate, in the following order:

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[273]Ruling of the Supreme Court of the Russian Federation dated March 30, 2015 No. 301-ES15-1181.
[274]Resolution of the Arbitration Court of the Volga-Vyatka District dated January 14, 2015 in case № A79-7895/2010.

first of all - on the monetary claims of construction participating citizens, except for claims for losses compensation;

secondly - according to Fund's requirements that it gained (appeared) as a result of compensation payment to citizens;

in the third place - according to the monetary claims of citizens participating in construction for losses compensation in the form of actual damage established in accordance with clause 2 of Art. 201.5 of the Insolvency (Bankruptcy) Law;

fourthly - for monetary claims of legal entities participating in construction, with the except for losses compensation claims;

fifthly - for monetary claims of legal entities - participants in construction for losses compensation in the form of actual damage established in accordance with clause 2 of Art. 201.5 of the Insolvency (Bankruptcy) Law;

sixthly – for monetary claims of other creditors under pledge secured obligation.

Moreover, taking into account the legislator's position on depriving legal entities that had the right to claim against the debtor for the transfer of residential premises to them, privileges when applying the norms of § 7 of Chapter to the bankruptcy procedure of this debtor. IX of the Bankruptcy Law, it seems reasonable to combine the claims of the fourth, fifth, sixth sub-priorities into one with equal proportional satisfaction of the claims of all secured creditors included in it.

Next, let us draw attention to the fact that the special procedure for the distribution of funds by virtue of Art. 201.14 of the Bankruptcy Law is not applicable to all cases of debtor-developer property sale encumbered with a pledge, in respect of which the provisions of § 7 are subject to application. Its provisions are applicable when selling the subject of pledge - a construction project owned by the developer by ownership right, and a land plot owned by the developer due to ownership, lease, sublease.

For the purposes of applying developer's bankruptcy provisions, the legislator in Art. 201.1 of the Bankruptcy Law formulates special definitions. Therefore, it seems that they should be guided by when resolving the issue of choosing the norm to be applied: Art. 201.14 or Art. 138 of the Bankruptcy Law. Hence, the distribution of funds

must occur according to the rules of the special provisions of Art. 201.14 Bankruptcy Law in case of sale:

an apartment building, a residential building of a blocked development, a building (structure) intended exclusively for accommodating parking spaces, including the construction of which has not been completed (subclause 5, clause 5, article 201.1);

a land plot that is built up or is subject to development and where a construction project is located or is to be built (subclause 6, clause 1, article 201.1).

In this case, it does not matter whether the construction participants have rights of pledge specifically to the object or land plot being sold. The key role here is played by the intended purpose, the permitted use, respectively, of the construction site or land plot[275].

Taking into account the main purpose of the provisions of § 7, it remains unclear why the legislator extends the special procedure for the distribution of funds only to the sale of certain types of pledged property of the debtor. It does not prescribe its application, for example, to cases of sale of other real estate, including buildings (unfinished construction projects), structures, constructures, land plots with other types of use, as well as to the sale of movable property, property rights, in relation to which the debtor's creditors have the right of pledge.

It is quite obvious that when applying the general procedure enshrined in Art. 138 of the Bankruptcy Law, the general principle for the application of § 7 of the priority of the rights of citizens participating in construction is not respected. These creditors are actually deprived of the opportunity to obtain satisfaction through the sale of other types of property encumbered with a pledge from the debtor's bankruptcy estate. Meanwhile, an analysis of the changes that the legislator makes to the provisions of § 7 allows us to conclude that this is his conscious position. This is evidenced not only by the changes in paragraph 1 of Art. 201.14 of the Bankruptcy Law in terms of expanding the list of pledge for the sale of which this article is applied, but also clarifying

[275]Resolution of the Arbitration Court of the Ural District dated October 8, 2019 in case № A50-20679/2017; Ruling of the Supreme Court of the Russian Federation dated December 24, 2019 № 309-ES19-23749.

other rules, which excludes a possible broad interpretation of the content of paragraph 1, clause 1 of Art. 201.14 of the Bankruptcy Law.

Thus, when in 2017 changes to clause 3 of Art. 201.9 of the Bankruptcy Law were made, the legislator clarified its content, additionally indicating that the special procedure under Art. 201.14 of the Bankruptcy Law is applicable in cases when it comes to satisfying the creditors' claims through construction projects and (or) land plots sale. The original version of paragraph 3 of Art. 201.9 of the Bankruptcy Law did not contain such a provision, which could create the prerequisites for a broad interpretation of Art. 201.14 of the Bankruptcy Law content when interpreted systematically with the norm of paragraph 3 of Art. 201.9 of the Law.

The above obviously indicates that the legislator does not offer creditors whose rights of claim in the register are secured by a pledge of property not related to that specified in paragraph 1 of Art. 201.14. Bankruptcy Law, to "share" the value of this pledge with construction participants, in contrast to creditors who have the pledge right for construction projects and land plots with the corresponding permitted use. It is difficult to explain what determines such loyalty in relation to the corresponding fourth-tier creditors. It seems that this is one of the attempts to preserve elements of the principle of equality (even in such a reduced form) within the framework of the debtor-developer's bankruptcy procedure [276]. Meanwhile, considering the purposes of § 7 application, such a position seems unfounded. Construction projects and land plots (given the content of these concepts, which is taken into account when implementing the § 7 of the Bankruptcy Law provisions) in the vast majority of cases are burdened with the rights of construction participants, therefore creditors who have taken such property as pledged, even without the features set by Art. 201.14 of the Bankruptcy Law provisions, will be forced to share the cost of such security for their rights with construction participants. The special norm additionally prescribed only that part of the proceeds from property sale must be used to satisfy the rights of citizens participating in construction

[276] Karelina S.A. Principles of legal regulation of relations arising in connection with debtor's insolvency (bankruptcy). Business law. 2008. № 2. P. 2–9.

who did not have a mortgage right on the relevant property[277].

However, creditors whose rights are secured by a pledge of real estate that does not fall within the definitions of a construction project or a land plot given in Art. 201.1 of the Bankruptcy Law, as well as the pledge of movable property, are exempt from this. This conclusion is supported by the fact that the legislator gives the privilege to creditors who are more careful in choosing the subject of pledge. One can hardly agree with this position. From the point of view of the principles laid down in the provisions of § 7, their application in practice, any creditor who is not a participant in the construction, when entering into a relationship with the developer, must assess the risk of his position and take into account the possibility of his insolvency. There are no objective grounds for deviating from this logic when creditors formalize rights of pledge over the developer's property.

Thus, in the event of bankruptcy of the developer, in order to achieve the purposes of applying § 7 Ch. IX of the Bankruptcy Law, each secured creditor must "share" the value of its pledge with bodies whose rights are subject to priority protection. Concidering the above, we propose to amend Art. 201.9, art. 201.14 of the Bankruptcy Law, establishing a special procedure for satisfying claims in a developer's bankruptcy case during any pledged property sale. This will ensure the achievement of the goal of satisfying construction participants demands to receive their invested funds from the bankruptcy estate in the absence of the possibility of satisfying their demands in kind by transferring ownership of the shared construction project in a completed construction site that has been put into operation. In addition, these changes will equalize the rights of other secured creditors, regardless of the item that secures their claim against the bankrupt developer.

The analysis carried out in this section allowed us to formulate the following conclusions.

[277]Belousov V.N. Mechanism for satisfying construction participants requirements in developer's insolvency (bankruptcy) process. Arbitration and civil process. 2014. № 8

To ensure that unscrupulous participants in the turnover cannot obtain advantages in satisfying their claims against the developer over other creditors, to ensure control over compliance with the rights of bona fide participants in civil legal relations, changes must be made to the legislation on equity participation, the Insolvency (Bankruptcy) Law, which:

oblige to include in the agreement provisions on the claim rights assignment information that in relation to the developer, the arbitration court accepted an application for declaring him bankrupt, with the new shareholder retaining only the scope of rights that the assignor would have in developer's bankruptcy;

provide for the shareholder who acquired the claim right against the developer after the initiation of a bankruptcy case against him, the scope of rights that in a bankruptcy case would be possessed by the body the shareholder acquired the claim right from under shared construction participation agreement;

oblige the court to send a ruling to the registration authority to accept an application for declaring the debtor bankrupt to ensure control over compliance with these provisions.

To achieve the purposes of application of § 7 Sec. IX of the Law on Bankruptcy to satisfy the demands of construction participants to receive money invested by them from the bankruptcy estate in the absence of the possibility of satisfying their demands in kind by transferring ownership of a shared construction project in a completed construction and commissioned facility, observing the principle of equality of others (besides citizens) developer's secured creditors:

consolidate at the level of guiding clarifications (in the resolution of the Plenum of the Supreme Court of the Russian Federation, review of judicial practice) the provisions on the application of sub-clause. 1 clause 1 art. 201.14. Bankruptcy Law in conjunction with the norm of Art. 201.9 of the Bankruptcy Law, indicating the appropriate priority for satisfying the claims of each category of secured creditors;

amend Art. 201.9, art. 201.14 of the Bankruptcy Law, that establishes a special procedure for satisfying creditors claims in a developer's bankruptcy case during any pledged property sale.

Chapter 3. SPECIAL WAYS OF CONSTRUCTION PARTICIPANTS' REQUIREMENTS SATISFACTION IN DEVELOPER'S INSOLVENCY (BANKRUPTCY)

In addition to a special subject composition, the developer's bankruptcy procedure also has special ways of satisfying construction participants requirements. When fixing the relevant provisions, the legislator reasonably proceeded from the fact that achieving the maximum result in the form of satisfying construction participants requirements for the premises is possible only if there is a completed construction facility put into operation, where the premises are subject to transfer into construction participants ownership who have invested their money in its construction[278]. In connection with this the result of each set in § 7 of Chapter. IX of the Bankruptcy Law implementation must be a specified result ensurance.

The methods that are used to complete objects construction of a developer undergoing bankruptcy proceedings can be classified on several grounds.

Depending on which entity is completing the problematic facilities construction we can distinguish:

"rehabilitation" methods, i.e. methods in which objects construction completion is carried out within bankrupt developer activities framework;

methods of "replacement", in the implementation of which the rights and obligations of the developer are transferred to another body that completes construction, puts the facility into operation, and fulfills obligations to construction participants[279].

According to the construction completion financing source, the following are distinguished:

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[278] Pleshanova O.P. Compensation mechanisms for "defrauded shareholders" in developer's bankruptcy. P. 152.

[279] See Slavich M.A. Financing of measures to complete the construction of objects of a bankrupt developer. Business, Management and Law. 2020. № 1. P. 63.

methods in which this financing is carried out at the non-profit organizations funds expense (the Fund, Fund of a constituent entity of the Russian Federation, housing construction cooperative, other specialized cooperative);

methods in which construction financing is carried out by a commercial organization - a legal entity (business company) that meets the requirements for the developer in accordance with Federal Law No. 214-FZ.

§ 1. "Rehabilitation" methods meeting the requirements of construction participants to a bankrupt developer

The essence of these methods is that obligations to construction participants are fulfilled by the bankrupt developer. At the same time, financing of its activities upon facilities construction completion is carried out by other bodies (the Fund, third parties). Such financing is not a rehabilitation in the sense in which this term is used in bankruptcy legislation, it is not a measure to prevent bankruptcy[280], since it is carried out already during the bankruptcy procedure of the debtor, but it also aims to satisfy the demands of the debtor's creditors, construction participants requirements for the relevant premises ownership transfer.

According to the Bankruptcy Law Art. 201.8-1 provisions, financing unfinished construction projects completion measures in respect of which funds from construction participants, infrastructure facilities, engineering and technological connection facilities were raised can be carried out at the expense of the Fund or a targeted loan (credit) issued to the developer by the Fund and (or) third parties. In other words, the Fund can finance the developer not only by issuing him a targeted loan (credit), but also in another way - "at the expense of the Fund's means[281]". In addition, by virtue of clause 1.1 of this article, in order to finance activities to complete construction, the bankruptcy trustee (external manager) during bankruptcy proceedings (external management) may,

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[280] Kislukhina I.A. State participation in bankruptcy cases and in procedures applied in bankruptcy cases. Management of Economic Systems. Electron. scient. magazine. 2017. № 9.

[281] For an assessment of these provisions essence, see: Dementev V.V. Bankruptcy of a developer: features and consequences. P. 307.

on behalf of the developer, enter into agreements with the Fund providing for the transfer of residential and non-residential premises, including agreements for shared construction participation. At the same time, an appeal to the provisions of Federal Law No. 218-FZ regulating the Fund's activities and by-laws allows us to draw slightly different conclusions about developer's activities financing forms by the Fund.

It should be noted that in its original version, Federal Law No. 218-FZ did not provide for the Fund's participation in resolving situations with bankrupt developers who, at the stage of concluding agreements for shared construction participation, did not pay contributions to the compensation fund in relation to the relevant construction projects. It means, it did not assume the Fund's participation in the already announced developer's bankruptcy procedures, it was aimed at resolving situations that would arise in the future, for which it was criticized[282].

For some time there were differences in the sources of financing for completion of construction. In general terms, it can be said that the provisions of the Law provided for the use of funds from the compensation fund, formed from mandatory contributions from the developer in accordance with the provisions of Federal Law No. 214-FZ, to restore the rights of citizens participating in shared construction who financed the construction of an object for which the developer paid contributions to the compensation fund. The rights of the remaining defrauded shareholders were subject to restoration through the use of the Fund's property, formed from property contributions of the Russian Federation and other public legal entities. However, after amendments were made to Federal Law No. 218-FZ in 2020, this difference was leveled out, which seems quite justified, since the relevant provisions of the Law actually duplicated each other.

Today, the procedure for using the Fund's property, which includes both means from the compensation fund and means received from other funding sources provided

[282] Zaporoshchenko V. Features of protecting construction participants rights in developers' bankruptcy. 2017. P. 78; Kovalkova Ye.Yu. New rules for protecting rights and interests of shared construction participants. Vestn. of Kostroma State university. 2017. V. 23. № 4. P. 250–252.

by law, does not depend on the categories of citizens of whose rights restoration all these funds are to be spent.

Thus, the Fund's property as a whole can be used to finance activities to complete the construction of unfinished construction projects. However, the literal interpretation of the provisions of Art. 13.1 of Federal Law No. 218-FZ may lead to the conclusion that the Fund's property can only be used to implement the "replacement" procedure, when the Fund, the Fund of a constituent entity of the Russian Federation (to which the corresponding funds were transferred) acquire the rights and obligations of the developer in the manner established by Art. 201.15-1, art. 201.15-2, art. 201.15-2-1 Bankruptcy Law. Part 4 of Art. 13.1 allows us to draw such a conclusion, which states that when the Fund decides to finance relevant activities, the necessary funds can be transferred to the Fund of a constituent entity of the Russian Federation, provided that the Government of the Russian Federation has not made a decision on the implementation of such activities by the Fund itself. In turn, the Fund of a constituent entity of the Russian Federation can participate in a developer's bankruptcy case only as a purchaser of property (property rights) and developer's obligations. With this interpretation, it is hardly possible to talk about the possibility of financing of measures to complete the construction of the bankrupt developer's facilities in the forms provided for in Art. 201.8-1 of the Bankruptcy Law by the Fund.

At the same time, these methods of the Fund's participation are provided for by the standarts of the Rules for making a decision by the public law company "Fund for Shared Construction Participating Citizens Rights Protection" on financing or the inappropriateness of financing the activities provided for in Part 2 of Article 13.1. Federal Law "On a public law company for shared construction participating citizens rights protection in developers's insolvency (bankruptcy) and on amendments to certain legislative acts of the Russian Federation (approved by Decree of the Government of the Russian Federation of September 12, 2019 No. 1192). According to clause 18 of these Rules, the decision on financing activities for unfinished construction projects construction completion, for the completion of construction (to construction) of infrastructure facilities during bankruptcy proceedings applied in a

developer's bankruptcy case, may also imply the provision of a targeted loan or conclusion by the Fund of agreements providing for residential and non-residential premises transfer to such a developer by the Fund, including agreements for participation in shared construction, in accordance with Art. 201.8-1 Bankruptcy Law.

Thus, among the "rehabilitation" methods of satisfying the requirements of construction participants include financing activities to complete the construction of the bankrupt developer's facilities through:

funds received by the developer from the Fund under agreements providing for the transfer of residential and non-residential premises, including agreements for participation in shared construction;

targeted loans issued to the developer by the Fund;

targeted loans (loans) issued to the developer by third parties.

In order to eliminate existing inaccuracies in the wording of the Bankruptcy Lawprovisions paragraph 1 of Art. 201.8-1 provisions, we propose to state its first sentence in the following wording: "Measures to complete the unfinished construction projects construction in respect of which funds from shared construction participants, infrastructure facilities and engineering and technological connection facilities were raised specified in paragraph 1 of Article 201.15-2 -1 of this Federal Law, can be carried out at the expense of a targeted loan (loan) issued to the developer by the Fund and (or) third parties"[283]

Clause 1 of Art. 201.8-1 of the Bankruptcy Law also provides for the possibility of securing targeted loans (loans) issued by the Fund and third parties with pledge for unfinished construction projects and land plots (rights to land plots). But it does not specify what objects (land plots) we can talk about: only those for the completion of which (for the construction of which) funds are loaned, or about any other objects (land plots) that the developer-bankrupt can dispose. This uncertainty, along with the high degree of risk of any transactions concluded during bankruptcy proceedings with the debtor, does not add liquidity to such pledge, which makes the conclusion of such

[283] See Slavich M.A. Financing of measures to complete the construction of objects of a bankrupt developer. Business, Management and Law. 2020. № 1. P. 63-68.

transactions unattractive for an independent investor. Therefore, with a high degree of probability it can be assumed that the implementation of such a method of financing as the provision of targeted loans (loans) to the developer by third parties is theoretically possible, but in practice can be determined largely by subjective (often political) factors.

We also note that the legislator has limited the possibility of attracting financing for construction completion by concluding agreements providing for residential and non-residential premises transfer, including agreements for participation in shared construction, only with the participation of the Fund.

Clause 1.1 art. 201.8-1 of the Bankruptcy Law directly prohibits the conclusion of such agreements with bodies other than the Fund, which does not seem entirely justified. It is understandable that the legislator wants to protect the interests of individuals by prohibiting the attraction of their funds through such high-risk transactions. The restriction on the assignment of claim rights under contracts in accordance with clause 1.1 of Art. 201.8-1 of the Bankruptcy Law contracts before obtaining permission to commission the relevant construction project. At the same time, we believe that the legislator unreasonably excludes the possibility of concluding similar agreements with legal entities. Despite the fact that the participation of private capital in financing problem objects construction completion is permitted by law (providing targeted loans (loans), the “replacement” procedure), depriving the investor of the opportunity to finance a bankrupt developer by concluding an agreement that provides for the further specific premises ownership transfer (residential, non-residential), looks illogical.

Being a professional participant in civil transactions, a commercial organization is able to objectively assess its risks, the chances of completing the construction of a particular facility and, as a result, the possibility of obtaining ownership of the premises and, taking this into account, make a decision on providing funds to the bankrupt. By the way, such an investment may look much more attractive to a private investor than a targeted loan, even one secured by real estate pledge.

By virtue of the Bankruptcy Law paragraph 1 of Art. 201.8-1, unfinished construction projects and land plots (rights to land plots) can serve as pledge for targeted loans (loans) issued to a bankrupt developer. Moreover, with regard to the sale of these

pledged items in Art. 201.14 of the Bankruptcy Law provides special rules for the satisfaction of secured creditors claims. It has already been said above that when selling such a subject of mortgage, even free of pledge, the creditor for the obligation secured by such property will initially receive only sixty percent of the proceeds. Moreover, in addition to the costs of paying off the claims of creditors of the first and second priority, costs of the procedure (legal costs, costs of paying remuneration to the bankruptcy (external) manager, payment for the services of bodies attracted by him to ensure the fulfillment of the duties assigned to him), twenty-five percent of the proceeds from the sale must be used to pay off the claims of construction participants, regardless of whether they have a right of lien in relation to the property. This exception to the general rules is due to the fact that when implementing the provisions of the Developer Bankruptcy Law, the interests of participants in shared construction are put at the forefront.

Let us note that the literature substantiates an even more radical approach: it is proposed to amend Art. 201.14 of the Bankruptcy Law, in order to equalize the rights of secured creditors with the rights of shared construction participants who do not have the right to pledge the relevant objects to satisfy their claims through the sale of the debtor's real estate[284]. However, even with the current version of this rule, the special procedure for paying off claims significantly reduces the value of possible pledge. At the same time, the private investor is deprived of the opportunity to finance the completion of construction by paying for it under agreements on premises ownership transfer to him in the future. Moreover, a bankrupt developer may also be deprived of potential investments from private capital if the Fund desides to refuse construction financing.

In connection with the above, we believe it is advisable to amend clause 1.1 of Art. 201.8-1 of the Bankruptcy Law, providing for the possibility of financing measures to complete construction by concluding agreements providing for residential and non-

[284] Kulikova T.V., Nesterova N.V. Some features of developer's bankruptcy. Science and education: farming and economics; entrepreneurship; law and administration]. 2019. № 1 (104). P. 72–74.

residential premises transfer, including agreements for participation in shared construction, also with commercial organizations.

Next, let us turn to the provisions of Art. 201.8-2 of the Bankruptcy Law. In the previous article norms development, its content is devoted to thefunds use regime received from the Fund under agreements concluded in accordance with clause 1.1 of Art. 201.8-1 of the Law on Bankruptcy contracts, including those connected with the Fund's decision on financing. Other financing by the Fund directly of a bankrupt developer can only be carried out by providing a targeted loan, and these funds must be credited to a special bank account opened by the bankruptcy (external) manager[285]. Due to the fact that, in essence, this account is a type of bank account, general rules on bank accounts that do not contradict the essence of a special bank account can be applied to it by analogy[286]. Moreover, regarding the use of funds from such an account Art. 201.8-2 of the Bankruptcy Law provides a special regime, bankruptcy immunity[287]. Such funds are written off only the bankruptcy (external) administrator order solely for settlement of the developer's current obligations in accordance with the purposes provided for in Art. 18, 18.1 of Federal Law No. 214-FZ (for the construction of a facility, accompanying this directly provided for by the provisions of these expense items). For other obligations of the developer, funds that are in a special bank account cannot be foreclosed on (clauses 2, 3 of Article 201.8-2).

The given restrictions are reasonable, justified, and are designed to ensure the implementation of the intended purpose of the funds issued by the Fund as loans to the bankrupt. But it is not clear why a similar regime cannot be applied to funds that a developer can receive from a third party under targeted loans (loans). The protection of these financial resources from other creditors of the developer is carried out not so much in the interests of the bankrupt, but to ensure the goals of such financing, i.e. to complete the facility construction. Therefore, the absence in paragraph 1 of Art. 201.8-

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[285] Dementev V.V. Bankruptcy of a developer: features and consequences. P. 307.
[286] Abramova Ye.N. Special bank account: Legal nature and classification. Law and Economics. 2016. № 7. P. 46–54.
[287] Insolvency (bankruptcy): 2 V, ed. by S.A. Karelina. C. 281.

2 of the Bankruptcy Law, the provisions on the crediting of funds received under targeted loans from third parties look, at a minimum, illogical and do not meet the purposes of applying the norms of § 7 Ch. IX.

In connection with the above, we propose to amend paragraph 1 of Art. 201.8-2 of the Bankruptcy Law, setting out its first sentence as follows: "In the event that a bankruptcy trustee (external manager) concludes contracts during bankruptcy proceedings (external management) providing for residential and non-residential premises transfer, and (or) financing the measures to complete construction of unfinished construction projects, as well as infrastructure facilities and engineering and technological connection facilities specified in paragraph 1 of Article 201.15-2-1 of this federal law, by providing the developer with targeted loans (loans) by the Fund and (or) third parties to the bankruptcy trustee (external manager) on behalf of the developer opens a special bank account for the developer, to which funds for such transactions are to be credited."

Thus, we consider it necessary:

in order to eliminate existing inaccuracies in the wording of the provisions of paragraph 1 of Art. 201.8-1 of the Bankruptcy Law, make appropriate changes to it, identifying the actual possible sources (methods) of financing activities to complete the construction of the bankrupt developer's facilities;

in order to effectively attract private capital funds to satisfy the requirements of construction participants for developers in respect of whom bankruptcy proceedings have been introduced, provide for the possibility of financing activities for construction completion by concluding agreements providing for residential and non-residential premises transfer, including shared construction participation agreements, also with commercial organizations. In addition, fix the rule on the mandatory transfer of relevant funds received from third parties (except for the Fund) to a special bank account applying a competitive immunity regime to it.

§ 2. "Replacement of the developer" in developer's insolvency (bankruptcy) case

The method of satisfying the requirements of construction participants, which in the literature is often simplistically referred to as replacing the developer, in our classification refers to methods of "substitution".

According the Bankruptcy Law§ 7 ch. IX norms, the key figure in the developer's insolvency (bankruptcy) case is the Fund. This confirms the consolidation of the recent legislative trend towards strengthening the role of government agencies in cases of developers' insolvency (bankruptcy)[288]. Similar conclusions are contained in judicial practice[289]. Methods of "substitution" are no exception to the direction chosen by the legislator; the main role in their implementation in developer's bankruptcy is assigned to the Fund.

There were changes made to the Federal Law of June 27, 2019 No. 151-FZ in Art. 201.10, 201.11, 201.15-1 of the Bankruptcy Law, that actually established the primacy of the Fund in determining the procedure for completing construction of the facility and satisfying the requirements of construction participants. Moreover, in the transitional provisions, the legislator stipulated that these articles are also subject to application in cases where bankruptcy proceedings for a developer were initiated before the day they entered into force, provided that settlements with third-priority creditors have not begun by this day (clause 17 Article 16 of Federal Law No. 151-FZ). Moreover, paragraph 18 of Art. 16 provides that the Fund is a body participating in the developer's bankruptcy case, regardless of the date of case initiation, the fact of payment by the bankrupt developer of mandatory deductions (contributions) to the com-

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[288] Pleshanova O.P. Compensation mechanisms for "defrauded shareholders" in developer's bankruptcy. P. 151.

[289] Determination of the Judicial Collegium for Economic Disputes of the Supreme Court of the Russian Federation dated 03.09.2023 № 305-ES19-22493(38).

pensation fund. Thus, it is the Fund, considering the goals and objectives of its activities, that has the primary burden in determining the way in which the requirements of construction participants will be ensured.

The Bankruptcy Law § 7 ch. IX norms actually provide for two ways to complete the construction of an unfinished construction project within the framework of another body activities(not the developer), which we call "substitution" methods:

repayment of construction participants claims by transferring an unfinished construction project in accordance with Art. 201.10 of the Bankruptcy Law (transfer to housing cooperatives);

settlement of the developer's obligations to construction participants by transferring the rights and obligations of the developer to another body (replacement of the developer) in accordance with Art. 201.15-1, art. 201.15-2 of the Bankruptcy Law.

Historically, the procedure for paying off the claims of construction participants by transferring an unfinished construction project to a housing cooperative appeared much earlier than the procedure for replacing the developer (2011 and 2015, respectively), but today it is the latter that has priority in implementation. This conclusion follows from a systematic analysis of the provisions of § 7 ch. IX of the Bankruptcy Law, regulatory and departmental acts governing the activities of the Fund.

The literature notes that the mechanism of "replacing the developer" was borrowed from the practice of the state corporation "Deposit Insurance Agency"[290]. For the first time, the possibility of transferring to a stable bank the assets of a problem bank, along with obligations to depositors, was provided for in 2008[291], subsequently, the corresponding procedures were included in the provisions of the Bankruptcy Law[292]. At the same time, the consolidation of these procedures was facilitated by the analysis of combinations of various designs used in practice, which made it possible to transfer

[290] Federal Law of December 23, 2003 № 177-FZ "On insurance of deposits in banks of the Russian Federation."
[291] Federal Law of October 27, 2008 № 175-FZ "On additional measures to strengthen the stability of the banking system in the period until December 31, 2011."
[292] Pleshanova O.P. Compensation mechanisms for "defrauded shareholders" in developer's bankruptcy. P. 153.

the rights and obligations of a bankrupt developer to a new legal entity (sale of unfinished construction projects, land plots (rights and obligations under contracts for the right to use such land plots for development) with the simultaneous transfer of rights and obligations under concluded contracts with construction participants (investors), which required the consent of each such participant), their legalization and simplification through direct regulatory regulation[293].

The provisions of Art. 201.15-1, 201.15-2 of the Bankruptcy Law. Are dedicated to the procedure for settling obligations to construction participants, the result of which is the transfer to a new developer of the property and obligations of the bankrupt developer.

If the arbitration court satisfies a body's statement of intention to become the purchaser of a land plot with inseparable improvements located on it (clause 6, clause 11, clause 12 of Article 201.15-1 of the Bankruptcy Law) and the bankruptcy trustee's petition to transfer property and liabilities to the acquirer developer (clause 2, clause 3 of Article 201.15-2 of the Bankruptcy Law) the following are transferred to the new developer:

land plots (rights to land plots) intended for the placement of unfinished construction projects;

inseparable improvements on the transferred land plots (including unfinished construction projects);

rights to project documentation, including all changes made to it;

rights and obligations of the developer under agreements with the design organization, technical customer, general contractor, and other agreements concluded for the purpose of completing the construction of unfinished construction projects by the bankruptcy trustee during bankruptcy proceedings;

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[293] Barabina M.P. Construction organizations bankruptcy relations legal regulation features. Current problems of Russian law, 2018. P. 98; Kratenko M. Replacing developer as a way to protect a shareholder. Ezh-Yurist. 2010. № 49. P. 12–13; Chukreev A.A. Repayment of construction participants claims: a critical analysis of main provisions of legislation on developers bankruptcy. Property relations in the Russian Federation. 2014. № 12. P. 74.

rights of claim for connection (technological connection) of the facility to engineering and technical support networks under agreements concluded by the developer in relation to the transferred land plots with inseparable improvements located on them;

obligations of the developer to construction participants, whose requirements are included in the register of construction participants' claims, with the exception of requirements for the collection of penalties (fines, penalties) and other financial sanctions. In this case, the developer's obligations to the construction participants are subject to transfer, subject to full payment by the latter of the contract price. Otherwise, the rights of claim against the construction participant for the fulfillment of obligations in the remaining part are transferred to the new developer, along with the obligations.

The literature suggests that the mechanism for replacing the developer is comparable to purchase and sale agreement design[294]. It is based on the obligation of a person who is interested in becoming the acquirer of the rights and obligations of the developer to provide the bankrupt with a counter-provision in the event that the value of the rights to a land plot or an unfinished construction project exceeds the total amount of claims of construction participants included in the register of their claims based on the Bankruptcy Law of Art. 201.15.1 provisions. It seems that this opinion cannot be considered correct due to the following circumstances.

Under real estate purchase and sale agreement (real estate sale agreement), the seller undertakes to transfer a land plot, building, structure, apartment or other real estate into buyer ownership (Part 1, Article 549 of the Civil Code of the Russian Federation). The price of the transferred property is an essential condition of the contract (Part 1, Article 432, Part 1, Article 555 of the Civil Code of the Russian Federation). But price is a monetary expression of the value of a product, monetary compensation

[294] Barabina M.P. Problems of unfinished construction in developer's bankruptcy case - the introduction of a new "mechanism" for replacing a developer in bankruptcy. Law and economics. 2016. № 7. P. 23–26.

for goods, services[295]. Payments under the agreement must be made in cash or non-cash form (Article 861 of the Civil Code of the Russian Federation).

When implementing the provisions of Art. 201.15-1, art. 201.15-2 of the Bankruptcy Law, the value of the property transferred to the acquirer is subject to assessment. However, this does not oblige the acquirer to pay the debtor its cost. The obligation to deposit funds into a special account of the debtor is provided only for cases where the value of the transferred property exceeds the total amount of claims of construction participants and only in the amount of such excess. When the total amount of claims of construction participants exceeds the value of the rights transferred to the new developer, counter-provision to the bankrupt should not be made at all.

Determining the legal nature of what is set in Art. 201.15-1, art. 201.15-2 of the Bankruptcy Law, the method of satisfying the claims of construction participants can be helped by an analysis of the relevant legislative provisions.

So, paragraph 4 of Art. 201.15-2 of the Bankruptcy Law provides that when transferring the property and obligations of the developer to the acquirer, the rules on the developer obtaining the consent of creditors to transfer the debt to another body and on their prior notification of the transfer of the developer's debt to the acquirer are not applied. In fact, the provisions of paragraph 10 of Art. 201.10 of the Bankruptcy Law which also apply in the procedure for replacing the developer are similar in content. By virtue of this norm, the consent of the land lessor to transfer the rights of the developer to this plot is not required.

Indeed, when transferring the developer's obligations, the debt of the debtor (bankrupt developer) is actually transferred to a new debtor (acquirer). According to the general provisions of civil law, transfer by a debtor of his debt to another body is permitted with the consent of the creditor and in the absence of such consent is concidered void (Part 2 of Article 391 of the Civil Code of the Russian Federation).

Further, in paragraph 9 of Art. 201.15.2 of the Bankruptcy Law, the legislator indicates that a change of bodies in the obligations arising from contracts concluded by

[295] Ozhegov S.I., Shvedova N.Yu. Explanatory dictionary of the Russian language. Moscow, 1994.

the developer with construction participants, in which the developer acts as a debtor, entails the transfer to the acquirer of the developer's obligations to transfer residential premises, parking spaces and non-residential premises from the day of transfer to him of the unfinished construction project, the land plot and the developer's obligations under the transfer deed. Moreover, in case of incomplete payment of the contract price by the construction participant, the transfer of the developer's obligations to the acquirer is possible subject to the transfer of claim right that the developer also had to fulfill the obligation in the remaining part (Clause 2 of Article 201.15-1 of the Bankruptcy Law).

It is obvious that the legislator is selective in regulating the procedure for transferring the rights and obligations of the developer (only the transfer of obligations to construction participants, as well as relations with the lessor of the land plot are specifically stipulated, while the settlement of contractual relations with design, network organizations, technical customers, and general contractors remains aside) and thereby refers to the general provisions of civil law on the change of bodies in obligations.

By virtue of the provisions of Part 1 of Art. 382 of the Civil Code of the Russian Federation, a right (claim) belonging to the creditor on the basis of an obligation may be transferred by him to another person under a transaction (assignment of the claim) or may be transferred to another body on the basis of law. At the same time, the list of cases of creditor's rights transfer under an obligation to another body on the basis of law is open (subclause 5, part 1, article 387 of the Civil Code of the Russian Federation).

The transfer of debt from the debtor to another body can be made by agreement between the original debtor and the new debtor (Part 1 of Article 391 of the Civil Code of the Russian Federation). The debt can be transferred from the debtor to another body on the grounds provided by law. To transfer a debt by force of law, the consent of the creditor is not required, unless otherwise established by law or follows from the essence of the obligation (Part 1, Part 2 of Article 392.2 of the Civil Code of the Russian Federation).

Considering the above, we can conclude that civil legislation provides for the possibility of both transferring rights (claims) and transferring debt by force of law. In turn, when the developer is replaced, there is a simultaneous transfer of rights and obligations under the contracts from the bankrupt developer (debtor) to the new developer (acquirer).

According to the Art. 392.3 of the Civil Code of the Russian Federation, the transfer by a party of all rights and obligations under the agreement to another body is a transfer of the agreement. Current legislation establishes cases of transfer of a contract by force of law. So, according to paragraph 3 of Art. 860.6 of the Civil Code of the Russian Federation, when a body ceases to perform the duties of a guardian or trustee, the owner of the nominal account is replaced by another owner who, in accordance with the procedure established by law, is appointed as a guardian or trustee of the beneficiary. The obligation under the nominal account agreement remains the same, but its subject composition changes in terms of the account owner. In this regard, such legal consequences are reasonably qualified as the transfer of a contract by force of law in the literature[296].

Let us note that, according to a number of researchers, the transfer of a contract is possible exclusively with the consent of the parties, and therefore these authors, in principle, deny the possibility of transferring a contract by force of law[297]. However, taking into account the analysis carried out, we do not share this position.

Thus, the settlement of the developer's obligations to the construction participants is the transfer by force of law of the following agreements of the debtor (bankrupt developer):

contracts with construction participants, based on the results of which residential premises, parking spaces and non-residential premises should be transferred to their ownership;

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[296] Yefimova L.G. Bank deposit and bank account agreements. Moscow. Prospect, 2018. P. 382.
[297] Gruzdev V.V. Transfer of a contract and its part. Economy and Law. 2022. No. 10. P. 42 - 56.

contracts with design organizations, technical customers, general contractors, other contracts concluded during bankruptcy proceedings for the purpose of completing the construction of unfinished construction projects by the bankruptcy manager[298].

It should be noted here that in the doctrine, agreements on the change of bodies in an obligation (assignment, transfer of debt) are defined primarily as an instrument for trading property rights and obligations on the market[299]. In this regard, the point of view of Yu.N. Gaiduk, who believes that debt transfer design can be used as means of ensuring obligation fulfillment seems interesting[300]. We believe, however, that we cannot agree with this idea. In this case, one of the qualifying features of a security obligation is missing - its performance of the function of stimulating the debtor to properly fulfill the main obligation. When transferring debt to another body, only the debtor's creditor changes, but no additional burden or threat of adverse consequences arises for him. Therefore, it is unlikely that the very possibility of changing the creditor can stimulate the debtor to properly fulfill the obligation.

Analyzing the change of bodies in an obligation, we note that the circumstances and purposes of rights (claims) transfer or debt transfer, the basis for which is a transaction (a contract concluded by the parties at their own will and discretion), must be distinguished from those in case of succession by force of law. As E.A. Ryzhkovskaya correctly writes, the transfer of rights of a creditor or obligations of a debtor on the basis of transaction and by force of law is determined by different economic relations and interests. In the first case, there is a manifestation of the freedom of civil turnover subjects. The purpose of the second is to streamline economic relations to protect the rights and legitimate interests of different bodies upon certain events occurrence, to prevent

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[298] Slavich M.A. The legal nature of replacing a developer in a case of insolvency (bankruptcy) of a developer. Business, Management and Law. 2023. № 4. P. 52-55.

[299] Nasonov A.M. Assignment of claim rights of debtor in process of judicial act forced execution; abst. dis. ...cand. of legal science. Moscow, 2003. P. 3; Kuznetsov A.V. Institute of assignment of claims] abst. dis. ...cand. of legal science. Ekaterinburg, 2013. P. 3; Pushkina A.V. Claim assignment as a form of succession in civil law] abst. dis. ...cand. of legal science. Moscow, 2006. P. 4.

[300] Gaiduk Yu.N. Transfer of debt in civil legal relations; abst. dis. ...cand. of legal science. Moscow, 2003.

adverse consequences harmful to society[301]. Indeed, it is difficult to argue with the fact that debtor developer rights and obligations transfer to a new body is carried out to protect the constitutional right of citizens to housing and to prevent adverse social consequences.

Here the question on the agenda is whether the ruling of the arbitration court on developer's property and obligations transfer to the acquirer is the only and sufficient document for the proper execution of this procedure.

Shared construction participation agreement is concluded in writing, is subject to state registration and is considered concluded from the moment of such registration (Clause 3 of Article 4 No. 214-FZ).

The rules of claims assignment and debt transfer (Article 392.3 of the Civil Code of the Russian Federation) apply to a transaction involving rights and obligations transfer of a debtor to another body. The assignment of a claim based on a transaction made in simple written or notarial form must be made in appropriate writing. Transaction claim assignment agreement requiring state registration must be registered in the manner established for the registration of this transaction, unless otherwise provided by law (Article 389 of the Civil Code of the Russian Federation).

Thus, an agreement on shared construction participation agreements transfer concluded with construction participants must be made in writing and is subject to state registration. The ruling of the arbitration court on the transfer to the acquirer of the property and obligations of the developer is the basis for state registration of the rights transfer to a land plot with inseparable improvements located on it (clause 11 of Article 201.15-2 of the Bankruptcy Law). The Bankruptcy Law does not contain any indication that this definition is also the basis for registering a change of bodies under contracts concluded by the debtor with construction participants. At the same time, we repeat, paragraph 9 of Art. 201.15.2 of the Bankruptcy Law provides that a change of bodies in the obligations that arise from contracts concluded by the developer with construction participants and in which the developer acts as a debtor entails the transfer to the

[301] Rizhkovskaya Ye.A. Transactions as grounds for changing bodies in an obligation; abst. dis. ...cand. of legal science. Ekaterinburg, 2005. P. 10–11.

acquirer of the developer's obligations to transfer residential premises, parking spaces and non-residential premises from the day of transfer of the unfinished construction project to him, the land plot and the developer's obligations under the transfer deed.

The Bankruptcy Law paragraph 10 of Art. 201.15-2 provisions allow us to say that this kind of transfer act is drawn up on the basis of an agreement for land plot transfer to the acquirer with inseparable improvements located on it and the obligations of the developer (hereinafter referred to as the transfer agreement). The mentioned agreement is concluded by a bankruptcy (external) manager on the basis of a ruling of the arbitration court on developer's property and obligations transfer to the acquirer (clause 8 of Article 201.15-2 of the Bankruptcy Law).

The Bankruptcy Law provisions do not regulate the transfer agreement content; it only states that the agreement must be concluded in writing and must not contradict this Law. Although the transfer of bankrupt developer contracts when a developer is replaced occurs by force of law, the corresponding ruling of the arbitration court may not contain (and often does not contain) information about specific contracts, the rights and obligations under which are transferred to the new developer (acquirer). This may create uncertainty in relations of a new developer with third parties - design organizations, technical customers, general contractors, and other counterparties of the debtor under agreements concluded by the bankruptcy trustee for the purpose of completing construction of unfinished construction projects.

In this regard, it seems that the transfer agreement must necessarily contain information about all agreements of the debtor that are transferred to the new developer. When there are agreements for participation in shared construction (the rights of claim of construction participants are based on such) among such agreements, the transfer agreement is subject to state registration.

Just as the arbitration court's ruling on developer's property and obligations transfer to the acquirer is the basis for state registration of rights to a land plot transfer with inseparable improvements located on it, the transfer agreement serves as the basis for entering into the Unified State Register of Information that the new developer has

become a party to the equity participation agreements previously concluded by a bankrupt developer.

Considering the analysis carried out, let us turn to the well-known classification of contracts to property and organizational[302].

The vast majority of contracts are of a property nature (purchase and sale, barter, donation, lease)[303]. Organizational ones include preliminary (Article 429 of the Civil Code), framework (Article 429.1 of the Civil Code), subscription (Article 429.4 of the Civil Code) contracts, an option to conclude a contract (Article 429.2 of the Civil Code), agreement on the procedure for conducting negotiations (clause 5 Article 434.1 of the Civil Code), agreements on legal entities creation (clause 5, article 9 of the Federal Law of December 26, 1995 No. 208-FZ "On Joint-Stock Companies", hereinafter referred to as the Law on Joint-Stock Companies, clause 5 of Article 11 of the Federal Law of 08.02 .1998 No. 14-FZ "On Limited Liability Companies", hereinafter referred to as the LLC Law); corporate agreements (Article 67.2 of the Civil Code of the Russian Federation), including an agreement on company participants rights exercise(Clause 3, Article 8 of the LLC Law) and a shareholder agreement (Article 32.1 of the JSC Law)[304].

One of the first in Russian science to draw attention to the importance of organizational relations in the field of civil law regulation was O.A. Krasavchikov. During the period of subordination method dominance in the Soviet economy, he noted that organizational forms and relations in civil law relations are built on the principles not of subordination, but of coordination[305].

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[302] Civil law, в 2 v. 3d ed., rewr. and add., ed. by B.M. Gongalo. Moscow, Statut, 2018. V.2. P. 157; Russian civil law. 2 V. Ed. by Ye.A. Sukhanova. Moscow, 2015. V. 2. P. 143.
According to the classification of V.V. Gruzdev, contracts are divided into isolated and interconnected (organizational and organized) (see: Gruzdev V.V. Organizational agreements in civil law. Laws of Russia: experience, analysis, practice. 2019. № 9. P. 93–95).

[303] Civil Code of the Russian Federation. General provisions of the contract. Article-by-article commentary on chapters 27–29, ed. by P.V. Krasheninnikova. Moscow, 2016.

[304] Civil legislation reforming: transactions general provisions, obligations and contracts. Resp. ed. V.V. Dolinskaya. Moscow, 2018.

[305] Krasavchikov O.A. Civil organizational and legal relations. Anthology of Ural civil law. 1925–1989. Moscow 2001. P. 161.

The vast majority of researchers reckon that the main purpose of concluding organizational agreements, qualifying their nature, distinguishing them from contracts of a property nature, is the creation of prerequisites for the successful implementation of counterparties interrelated activities[306]. So, according to B.I. Puginsky, an organizational agreement is an agreement aimed at formation of organizational and legal ties between its participants for subsequent normal formation and development of property ties[307]. In other words, the organizational contract precedes the main contract it organizes.

Meanwhile, M.A. Egorova's opinion, who notes that organizational agreements can be concluded not only for the purpose of forming new relationships (coordinating parties actions to reach agreements between them on the emergence of rights and obligations for each of them in relation to each other by concluding the main agreement) seems more reasonable. Organizational agreement can also be concluded between the parties to an existing obligation in order to stabilize existing relations, optimize them or increase efficiency, or obtain a more pronounced economic effect from the cooperation of the subjects of the obligation. She characterizes such agreements as organizational-coordinating[308]. This exact approach allows us to qualify an organizational agreement not only as a law-forming legal fact[309], but also as a law-altering fact.

Therefore, transfer agreement is an organizational agreement, which is concluded between bankruptcy (external) manager and acquirer to streamline the relations of the acquirer (new developer) with participants in shared construction, design organizations and other debtor counterparties, named in paragraph 1 of Art. 201.15-1, sub. 5 paragraph 3 art. 201.15-2 of the Bankruptcy Law. The following features distinguish it from other types of organizational agreements:

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[306] Gromova Ye.A. Agreement on the implementation of technology development activities in special economic zones. Moscow, 2015; Yefimova L.G. Framework (organizational) agreements. Moscow 2006. P. 3.

[307] Puginskii B.I. Commercial law of Russia. Moscow, 2005. C. 183.

[308] Yegorova M.A. Organizational attitude and organizational transactions in civil law regulation. Laws of the Russian Federation: experience, analysis, practice. 2011. № 5. C. 10–21.

[309] Vaseva N.V. Property and organizational civil law contracts. Civil law contract and its functions. Sverdlovsk, 1980. P. 53–69; Illarionova T.I. Civil-legal organizational relations and methods of their protection. Civil law, economics and standardization. Sverdlovsk: SUI, 1978. Ed. 64. P. 28–37.

1) this agreement is concluded in the presence of obligatory relations (share participation agreements, general contract agreements, etc.), and is not aimed at their future occurrence;

2) transfer agreement parties do not coincide with the parties to the main agreements regarding which it performs an organizational and coordinating function[310].

The transfer agreement itself does not create or change the essence and content of the obligations (the scope of the rights and obligations of the parties) under the main agreements that are transferred to the new developer. It also does not perform a preliminary function, since the transfer of rights and obligations under the main contracts to the new developer (transfer of contracts) is carried out by force of law. In this regard, there is no need to conclude additional contracts and (or) agreements between the new developer and the debtor's former counterparties (on assignment, transfer of debt, replacement of parties, etc.). The need to conclude this agreement is caused precisely by the need to ensure legal certainty in the relations of the new developer with his new counterparties, to confirm his entry into the agreement instead of the debtor.

The above mentioned allows us to define the agreement for the transfer to the acquirer of a land plot with inseparable improvements and obligations of the developer located on it as a special organizational (organizational-coordinating) agreement to be concluded between the party retiring from the obligatory legal relationship and its singular legal successor in order to ensure legal certainty of parties composition in the data obligations for their subsequent proper execution.

Returning to the study of "replacing the developer" as a way to satisfy the requirements of construction participants, it should be noted that in this case, the use of the concept of "satisfying requirements" is a legal fiction[311]. In reality, no demand satisfaction occurs. The construction participant's claim is a requirement to transfer ownership of the residential premises to him (it was previously noted that monetary and non-monetary claims in the register of creditors' claims of a bankrupt developer pursue

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[310] See Slavich M.A. Replacement of the developer as a transfer of contracts by force of law: what risks should the acquirer take into account. Business, Management and Law. 2024. № 1. P. 79-82.
[311] Lotfullin R.K. Legal fictions in civil law; abst. dis. ...cand. of legal science. Moscow, 2008. P. 7.

precisely this material and legal interest). Therefore, it can only be satisfied by transferring ownership of the residential premises due to him under the contract to the construction participant. However, in developer bankruptcy case, the replacement of the developer is the basis for excluding construction participants claims from the register (clause 6 of Article 201.15-2 of the Bankruptcy Law)[312].

As a general rule, the basis for excluding a claim from creditors' claims register is its satisfaction (clause 3 of Article 121 of the Bankruptcy Law). In our case, the legislator's appeal to a legal fiction allows us to consider relevant construction participants demands in developer bankruptcy case as satisfied. In other words, satisfying construction participant requirements actually means providing him with the opportunity to obtain ownership of residential premises from a new (liquid) developer (who has confirmed his compliance with the requirements for the developer, as well as the availability of material and financial resources sufficient to complete the construction of the corresponding facility).

Thus, "developer substitution" as a way to satisfy construction participants demands is one of the cases of legal fiction in law use.

During "developer substitution" (we repeat), the contracts (primarily equity participation) are transferred to a new developer, the acquirer of the rights and obligations of the developer. Such a transfer is aimed at protecting the rights and legitimate interests of construction participants, so that they receive ownership of residential premises.

Traditionally, in civil law, methods of protecting civil rights are understood as means set by law, with the help of which suppression, prevention, elimination of violations of the law, its restoration and (or) compensation for losses caused by violation of law and impact on the offender can be achieved[313]. Among those named in Art. 12 of the Civil Code of the Russian Federation, the methods of protecting civil rights include termination or change of legal relationship.

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[312] Determination of the Judicial Collegium for Economic Disputes of the Supreme Court of the Russian Federation dated May 22, 2023 № 305-ES22-29387.

[313] Braginskii M.I., Vitryanskii V.V. Contract law. General provisions. 3d ed. Moscow, 2001. Book. 1; Civil law, 3 v., ed. by A.P. Sergeeva. Moscow V. 1. P. 545.

Change of bodies in an obligation is a change in the legal relationship in the relevant part (in the composition of the parties)[314]. At the same time, agreement transfer is a special case of a change of bodies, since the rights and obligations under the relevant agreements are transferred in full to the legal successor. The "replacement of the developer" has even greater features, due to the fact that contracts transfer is carried out by force of law. At the same time, it seems there is no reason to assert that "developer substitution" is a full-fledged independent method of protection, and it is more correct to consider it a legal remedy[315]. In other words, contracts concluded by the debtor with construction participants transfer, carried out by force of law (Article 201.15.1, Article 201.15-2 of the Bankruptcy Law), is a legal remedy that is a type of such a universal method of rights protecting enshrined in Art. 12 of the Civil Code of the Russian Federation, as a change in the legal relationship.

Especially noteworthy is also the fact that the ruling of the arbitration court on developer's property and obligations transfer to the acquirer is the basis for state registration of land plot with inseparable improvements located rights transfer, as well as unfinished construction project rights transfer (in case when debtor ownership of such an object has been registered).

The grounds for property rights emergence are enshrined in Chapter 14 Civil Code of the Russian Federation. These include the emergence of ownership rights to newly manufactured or created by a body property for himself, the acquisition of ownership rights to a thing made by processing, the conversion into ownership of things publicly available for collection, the recognition of ownership rights to unauthorized construction, the acquisition of ownership rights by virtue of acquisitive prescription, repossession of movable things that the owner has abandoned. However, the acquisition by a new developer of rights to a land plot, an unfinished construction project or

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[314] Yegorova M.A. Unilateral refusal on civil contract execution. 2nd ed., rewr. and ed. Moscow, 2010; Coordination of economic activities in the Russian legal space. Resp. ed. M.A. Yegorova. Moscow, 2015; Kulakov V.V. Obligation and complications of its structure in Russian civil law. 2nd ed., rewr. and ad. Moscow, 2010.

[315] Luneva Ye.V. Civil legal remedy and legal construction: relations between concepts. Legal world. 2015. № 8. P. 48–52.

inseparable improvements located on a land plot cannot be attributed to any of these grounds.

In accordance with Part 2 of Art. 218 of the Civil Code of the Russian Federation, property ownership right that has an owner can be acquired by another body under a contract of sale, exchange, gift or other transaction on the alienation of this property. It is undeniable that in our case property that is transferred to the acquirer owner is the bankrupt. Therefore, the arbitration court's ruling on developer's property and obligations transfer to the acquirer cannot be qualified as a contract of sale, exchange, donation or other transaction for this property alienation. Likewise, a statement by a new developer about his intention to become the purchaser of a land plot with inseparable improvements located on it and to fulfill the obligations of the developer to the construction participants, with whom he applies to the arbitration court, cannot be recognized as a unilateral transaction, since his one expression of will is not necessary and sufficient condition for the transfer of ownership of the debtor's corresponding property to him (Part 2 of Article 154 of the Civil Code of the Russian Federation).

Thus, carried out by virtue of Art. 201.15.1, art. 201.15-2 of the Bankruptcy Law, transfer of developer rights is not set in Art. 14 of the Civil Code of the Russian Federation as the basis for property rights emergence.

Analysis of the legislation regulating the procedure for replacing a developer shows that a number of its provisions raise certain questions.

So, today Art. 201.15-2-2 of the Bankruptcy Law grants the Fund, if it decides to pay compensation to citizens, the right to apply to the arbitration court with a statement of intention to acquire the rights of the developer to a land plot, an unfinished construction object (objects) located on it, inseparable improvements to such a land plot , rights to design documentation as amended. Upon receipt of such an application, the arbitration court considers the merits of transferring the specified plot possibility, rights, and objects to the Fund. Payments by the Compensation Fund in favor of citizens are taken into account as counter-provision. In addition, the Fund must additionally:

transfer funds to the developer's special bank account to satisfy claims for current payments, claims of first- and second-priority creditors included in the register of creditors' claims;

transfer funds to the developer's main account in the amount of the difference between the value of the developer's rights to the land plot with the unfinished construction object(s) located on it, inseparable improvements and the total amount of claims of construction participants included in the register of claims of construction participants, for which payment will be made.

Taking into account these provisions, attention is drawn to the fact that, in contrast to the procedure for transferring an unfinished construction project (Article 201.10 of the Bankruptcy Law), when satisfying an application for transfer to the Fund of the relevant land plot, objects, inseparable improvements, the number of payments that must be made by the Fund, the amounts to satisfy the claims of secured creditors, whose rights are secured by a pledge of property to be transferred to the Fund, but who are not among the construction participants, do not appear. It follows that the claims of such creditors should not be repaid at the expense of the Fund in order to transfer the rights to the property encumbered with the pledge. Moreover, in accordance with the provisions of paragraph 25 of Art. 201.15-2-2, from the date of state registration of the transfer to the Property Rights Fund, the pledge of the developer's rights to the land plot with all objects located on it and inseparable improvements, including obligations related to ensuring the rights of construction participants under agreements for participation in shared construction, is terminated in accordance with the legislation on shared construction of apartment buildings and (or) other real estate.

These innovations continued the legislator's logic to deprive secured creditors of the right to priority satisfaction of their claims, which was first reflected in Federal Law No. 151-FZ of June 27, 2019. By virtue of paragraph 14 of Art. 16 of this Federal Law, the land plot transfer with inseparable improvements located on it and the obligations of the developer in accordance with Art. 201.15.1 of the Bankruptcy Law is carried out without complying with the rules of sub. 3 p. 3 art. 210 of the Bankruptcy Law (i.e., without payments in favor of secured creditors) if, in relation to an apartment

building and (or) other real estate to be built on the transferred land plot, the agreement with the first construction participant was concluded without escrow accounts use and until 07/01/2019 (the equity participation agreement was submitted for state registration before the same date).

Thus, in fact, the secured creditors were deprived of the right to priority satisfaction of their claims at the expense of the pledge, which cannot be considered justified. Contained in paragraph 11 of Art. 201.15-2, paragraph 25 of Art. 201.15-2-2 of the Bankruptcy Law, clarifying that the termination of a pledge in this case does not entail a change in the order of creditors claims satisfaction who were secured by it, does not improve the position of the secured creditors, and raises additional questions. The Bankruptcy Law does not name cases of changing the priority of a claim when its pledge is lost, and therefore it is difficult to guess what goal the legislator pursued in this case[316].

As a general rule, pledged creditors have an advantage in satisfying their claims at the expense of the pledged property, regardless of the order of their claims in the register of creditors' claims. The rights of secured creditors are subject to satisfaction in a special manner provided for in Art. 201.14 of the Bankruptcy Law, considering the rules formulated by judicial practice on taking into account the priority of their claims in order to establish the sequence of their satisfaction. In any case, the meaning of the privileges of a secured creditor lies in his ability to satisfy his claims at the expense of the pledged property in compliance with the procedure prescribed by law, preferentially over other creditors. This explains why pledge as a way to secure obligations occupies one of the first places in the system of legal structures that minimize financial risks and provide an optimal guarantee of protection of creditors rights [317].

Apparently, taking all this into account, the Constitutional Court of the Russian Federation declared clauses 14 and 17 of Art. 16 of the Federal Law of June 27, 2019 No. 151-FZ in conjunction with clause 11 of Art. 201.15-2 of the Law on Insolvency

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[316] See Slavich M.A. The special role of the Public Law Company “Fund for the Protection of the Rights of Citizens Participating in Shared Construction in the Framework of a Developer’s Bankruptcy Case. Business, Management and Law. 2020. № 3. P. 38

[317] Insolvency (bankruptcy): 2 V, ed. by S.A. Karelina. V. 1. P. 311.

(Bankruptcy) to the extent that they do not provide for the necessary legal guarantees to protect the rights of creditors who are not participants in the construction upon termination of their lien rights in connection with the transfer of a land plot, an unfinished construction project to the Fund in developer bankruptcy case framework[318].

Before changes were made to the legislation, the Constitutional Court of the Russian Federation established a temporary legal regulation of disputed relations, indicating that bodies who previously were developer's pledged creditors, to whom the Fund did not have obligations to provide premises, in connection with the termination of the pledge, have a right of claim against the Fund, which has become the acquirer of developer's rights to relevant property, in the amount of the principal total debt on the obligation secured by the pledge and interest due, without renewing the accrual of interest, but not more - in aggregate for all bodies who were previously secured creditors - the value of pledge subject on the day the arbitration court made the decision on relevant property transfer to the Fund.

Thus, the Constitutional Court recognized that bodies who have lost pledge right and received right to demand from the Fund ownership transfer of premises in a completed building, have the right to claim against the Fund in the amount corresponding to the amount established by Art. 201.14 of the Bankruptcy Law.

To date, no changes have been made to the legislation. At the same time, the provisions of clauses 14 and 17 of Art. 16 of the Federal Law of June 27, 2019 No. 151-FZ are applied by the courts taking into account the said decision of the Constitutional Court of the Russian Federation[319].

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[318] Resolution of the Constitutional Court of the Russian Federation dated July 21, 2022 No. 34-P in case of checking constitutionality of parts 14 and 17 of Article 16 of the Federal Law "On Amendments to the Federal Law "On Participation in Shared Construction of Apartment Buildings and Other Real Estate and on Amendments to Some legislative acts of the Russian Federation" and individual legislative acts of the Russian Federation", subparagraphs 3 and 3.1 of paragraph 1 of Article 201.1, paragraph 5 of Article 201.10, paragraph two of paragraph 2 of Article 201.15, subparagraph 1 of paragraph 8 of Article 201.15-1, paragraph 11 of Article 201.15-2 of the Federal of the Law "On Insolvency (Bankruptcy)" in connection with request of the Supreme Court of the Russian Federation and complaint of citizen A.N. Shalimova.

[319] Determination of the Judicial Collegium for Economic Disputes of the Supreme Court of the Russian Federation dated September 23, 2022 № 305-ES19-12342(3); Determination of the Judicial Collegium for Economic Disputes of the Supreme Court of the Russian Federation dated October 3,

Enacting of the mentioned decision seems more than justified. At the same time, it should be noted that the provisions of Art. 201.15.2-2 of the Bankruptcy Law (namely clause 4 and clause 25), since they were not applied in the applicant's case, although it seems that these norms do not comply with the Constitution of the Russian Federation. Therefore, we believe that when introducing changes to the legislation required by virtue of the above Resolution of the Constitutional Court of the Russian Federation, the federal legislator must also take into account the need to bring the provisions of Art. 201.15-2-2 of the Bankruptcy Law, which in their essence and content are similar to those declared unconstitutional.

But how much of the obligation to transfer ownership of residential (non-residential) premises to construction participants passes to the new developer? From the literal content of the provisions of Art. 201.15-1, art. 201.15-2 of the Bankruptcy Law it follows that those obligations of the bankrupt developer that meet the following conditions are transferred to the acquirer:

such requirements are included in the register of requirements of construction participants;

they are not requirements for penalties collection (fines, penalties) and other financial sanctions.

The first thing that raises certain questions is the absence in the Bankruptcy Law of an indication by what point the claim must be included in the register so that the construction participant can claim its satisfaction by the new developer (on the date the interested party applies to the arbitration court with a statement of intent, the date acceptance of such an application for consideration, the date of the arbitration court's ruling on intent statement satisfaction, the date of the ruling on the transfer of the property and obligations of the developer to the acquirer). Only a systematic interpretation of other provisions of § 7 Ch. IX of the Bankruptcy Law can help make a corresponding conclusion.

2022 № 305-ES21-2063(3.5); Determination of the Judicial Collegium for Economic Disputes of the Supreme Court of the Russian Federation dated November 2, 2023 № 305-ES22-24570(6.7).

According to paragraph 15 of Art. 201.4 of the Bankruptcy Law, the claims of construction participants included in the register of claims of construction participants after the day the Fund made a decision on financing measures to complete construction or after the day the Fund of a constituent entity of the Russian Federation made a decision on financing measures to complete construction of unfinished construction projects are subject to satisfaction in the manner prescribed para. 2 subp. 3 p. 1 art. 201.9 of the Law. Therefore, these requirements will be subject to satisfaction in the first subpriority of the third stage of the register of creditors' claims. Of course, the above provisions in relation to the claims of construction participants that arose after the date of acceptance of the application for declaring the debtor bankrupt (current requirements) should be applied taking into account the norm of clause 1.1 of Art. 201.9 of the Bankruptcy Law, i.e. such current claims are repaid as part of the third priority of claims for current payments. However, this rule is not significant in this case.

It follows from the contents of paragraph 15 of Art. 201.4 of the Bankruptcy Law that construction participants who were “late” in including their claims in the register on the date of the relevant Fund’s adoption of this decision do not have the right to claim satisfaction of their claims by the acquirer (the Fund or the Fund of a constituent entity of the Russian Federation) in kind. The 2020 changes clarified that such participants have the right to receive compensation in the manner prescribed by Federal Law No. 218-FZ, i.e., receive only monetary satisfaction of their claims.

Considering the foregoing, we can conclude that in cases where the acquirer of the rights and obligations of the developer is the Fund or the Fund of a constituent entity of the Russian Federation, only those obligations for the transfer of residential (non-residential) premises that were included in the register of creditors’ claims on the date of the Fund’s decision are transferred to it on financing activities to complete the construction of unfinished construction projects. The Fund is obliged to pay monetary compensation to other construction participants.

However, to what extent should a new developer, who is not a Fund or a Fund of a constituent entity of the Russian Federation, assume obligations to construction

participants? Paragraph 15 of Art. 201.4 of the Bankruptcy Law and its other provisions do not contain additional clauses or clarifications in this regard. Meanwhile, the applicant, when deciding whether to apply to the arbitration court with a statement of intent, unconditionally evaluates: the volume of obligations that he will have to fulfill to the construction participants when transferring the rights and obligations of the developer to him, as well as the volume of financial investments that he will have to make to complete the construction of the corresponding object, putting it into operation. Based on the results of this assessment, he correlates the totality of possible costs with the amount of money that he can extract through the sale of premises free from the rights of construction participants[320].

At the same time, the applicant will be able to objectively assess the volume of obligations to the construction participants that will be transferred only based on information about the requirements that are included in the register of construction participants' claims as of the date of his adoption of the corresponding management decision. At the same time, the date of the decision made by the commercial organization that acts as the acquirer should not be considered the date of the conditional "closure" of the register of claims of construction participants for the purpose of transferring rights to the new developer. Such an objective date may be the date the arbitration court accepted the statement of intent for consideration (the date the corresponding determination was issued). The permissible error between the volume of claims of construction participants that were included in the register of creditors' claims at the time of the decision to apply for a statement of intent, with the volume that will actually be included in the register on the date of acceptance of the application for consideration by the arbitration court, the applicant can estimate taking into account the information about the requirements that were stated by construction participants and were not considered by the date of acceptance of their application for consideration.

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[320] See Slavich M.A. Replacing the developer: risks for the investor. Business, Management and Law. 2022. № 4. P. 43-48; Slavich M.A. Replacement of the developer: investor's assessment of the volume of obligations of the bankrupt developer. Legal Insight. 2023. № 4. P. 34-38.

Opponents of the expressed position can argue their objections by the fact that the Unified State Register of Real Estate (USRN) contains objective data on registered agreements for participation in shared construction. This means that their analysis will allow us to obtain information about premises free from the rights of construction participants in the construction site. We cannot agree with this opinion due to the following.

Firstly, when it comes to the activities of unscrupulous developers, the sale of apartments (non-residential premises) can be carried out using schemes to circumvent the provisions of Law No. 214-FZ, without registering equity participation agreements in the Unified State Register of Real Estate.

Secondly, in the presence of "double" sales (including termination of the contract by the original shareholder, to whom the developer did not return the money paid, with the subsequent sale of the same premises to a new construction participant), assess the volume of requirements that will have to be satisfied in order to comply conditions for the transfer of rights and obligations of the developer, solely according to the Unified State Register of Real Estate, are hardly possible.

Thirdly, by virtue of § 7 norms, construction participants include only citizens. However, the rights of claim under an equity participation agreement are freely traded on the market. At the same time, the signing of assignment agreements and settlements under them may not coincide with the registration of the transfer of rights under the agreements in the Unified State Register of Real Estate. The absence of claim under an equity participation agreement right transfer registration fact in the presence of evidence of payment for such a right, considering the circumstances of a particular dispute regarding the consideration of the of aconstruction participant claim, the purpose of applying § 7 norms (protection of tcitizens rights) cannot be an obstacle to the inclusion of the corresponding citizen claim (even though in the Unified State Register of Real Estate the corresponding premises are listed as a legal entity) in the register of construction participants requirements. Therefore, under these circumstances, a potential purchaser also cannot, solely on the basis of Unified State Register data, objectively assess the amount of obligations to construction participants who may transfer to it.

Additionally, we note that judicial practice places the risk of increasing the volume of obligations to be fulfilled towards construction participants and the associated negative consequences on the acquirer of the rights and obligations of the developer[321].

Considering the above, we propose to amend clause 15 of Art. 201.4 of the Bankruptcy Law, providing it with a provision for satisfaction in the order of paragraph 2 sub. 3 p. 1 art. 201.9 of the Bankruptcy Law (with the possibility of receiving compensation from the Fund) not only the claims of construction participants that were included in construction participants claims register after the day the Fund or the Fund of a constituent entity of the Russian Federation made a decision on financing, but also the claims of construction participants included in the register after the date of enacting a statement of intent from the future acquirer by arbitration court.

The next point that needs to be clarified is the nature of the requirements for which the acquirer becomes obligated to the construction participants.

According to the Bankruptcy Law provisions (we repeat), these include the claims set in the register construction participants claims, with the exception of claims for the collection of penalties (fines, penalties) and other financial sanctions.

By virtue of provisions of sub. 7 clause 1 art. 201.1 of the Bankruptcy Law, of construction participants claims register includes:

requirements for residential premises transfer(car spaces, non-residential premises) (up to 7 sq. m inclusive);

monetary claims, which include not only claims for the return of what was paid under the contract, but also claims for compensation for losses in the form of actual damage caused by violation of obligations to transfer premises (subclause 4, clause 1, article 201.1), the amount of which is determined according to the rules , established in paragraph 2 of Art. 201.5 of the Law.

Consequently, penalties (fines, penalties) and other financial sanctions are not among the requirements included in the register of construction participants claims and

[321] Determination of the Judicial Collegium for Economic Disputes of the Supreme Court of the Russian Federation dated July 17, 2023 № 306-ES22-27838(2,3).

cannot be transferred to the new developer. At the same time, the amount of losses is included in such a register, and the Law does not contain any clauses on its exclusion from the number of transferred obligations. Taking into account the above, the provisions of the Bankruptcy Law under consideration could be interpreted in such a way that obligations to construction participants in the amount of actual damage also pass to the new developer. But in July 2020, the norm of paragraph 6 of Art. 201.15-2 has been clarified, and today, when the property and obligations of the developer are transferred to the acquirer, claims for compensation for losses are recognized as extinguished, i.e., the obligations to compensate the construction participants do not pass to the new developer.

Thus, the acquirer of developer's rights and obligations gets:

requirements for residential premises transfer (car spaces, non-residential premises) (up to 7 sq. m inclusive);

monetary demands for the return of what was paid under an agreement with a bankrupt developer.

At the same time, the question of the procedure for the fulfillment by the new developer of obligations to construction participants, whose demands are expressed in monetary terms, remains outside the scope of legal regulation. Formally, such a construction participant has the right to demand that the acquirer pay him money. However, this contradicts the logic and meaning of the norms of § 7 ch. IX of the Bankruptcy Law. Therefore, we propose to amend clause 6 of Art. 201.15-2 of the Bankruptcy Law, stating it as follows: "Based on the ruling of the arbitration court on the transfer to the acquirer of developer's property and obligations, the claims of construction participants, obligations fulfillment which was transferred to the acquirer, are excluded by the bankruptcy trustee (external manager) from construction participants claims. Monetary claims of construction participants for compensation of losses established in accordance with paragraph 2 of Article 201.5 of this Federal Law are recognized as extinguished; monetary claims specified in paragraph 2, paragraph 4, paragraph 5 of subparagraph 4 of paragraph 1 of Article 201.1 of this Federal Law are transformed into claims for transfer, respectively, of residential premises, parking spaces and (or) non-

residential premises that are the subject of an agreement, in connection with the execution of which a monetary claim of a construction participant arose, information about which was included in the register of claims of construction participants in accordance with paragraph 3 of Article 201.5 of this Federal Law "

It should be noted here that a number of researchers propose to enshrine in the § 7 provisions, as an alternative to the procedure for replacing the developer (in addition to transferring the unfinished construction project to a cooperative created by the construction participants in accordance with Article 201.10 of the Bankruptcy Law), the possibility of selling the unfinished construction project, the land plot under it with condition for the buyer to accept the obligation to complete construction and transfer the premises to the construction participants[322]. It is also proposed to consolidate this possibility through special legal regulation (outside the bankruptcy legislation)[323].

The positive aspects of this proposal include the following.

Firstly, when selling an unfinished construction project with a land plot, additional funds will be received in comparison with the amount that would have been received by the bankrupt developer during the implementation of the procedure for replacing the developer.

By virtue of Art. 201.15-1 of the Bankruptcy Law, the acquirer is obliged to pay the debtor the difference between the cost of the unfinished construction project with rights to the land plot and the total amount of claims of construction participants included in the register of claims of construction participants. Sale of property, in accordance with the general provisions of Art. 110, 139 of the Bankruptcy Law, is carried out during competitive procedures, which are aimed at alienating property with maximum benefit for the debtor's creditors (at the highest possible price due to possible competition of potential acquirers).

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[322] Altukhov A.V. Civil legal protection of participants rights in shared apartment buildings construction in developer's insolvency (bankruptcy) : abstract. dis. ...cand. of legal science. Moscow, 2015. P. 13.

[323] Belousov V.N. Mechanism for satisfying construction participants requirements in developer's insolvency (bankruptcy) process. P. 34.

Secondly, the proposed mechanism is able to protect the buyer, who will assume the obligation to transfer the premises to the construction participants upon completion in accordance with the agreements that were concluded with the bankrupt developer, from obligations transfer to pay a penalty for the period of previous developer delay. Unfortunately, this was impossible when transferring responsibilities for the completion of "problem" objects to a new developer by concluding agreements with the participation of construction participants on the transfer of rights and obligations under contracts that were concluded with an unscrupulous developer. This model was used in practice until it appeared in § 7 of Chapter. IX Bankruptcy Law Art. 201.15-1, art. 201.15-2.

However, we believe that while initiating such changes, the following significant points should also be taken into account.

Firstly, in addition to the cost of the acquired property (unfinished construction project, rights to a land plot), the buyer must pay amounts that would be deposited into a separate account of the debtor:

to make current payments related to legal expenses in the bankruptcy case, payment of remuneration to the bankruptcy trustee, payment for the activities of bodies whose involvement by the bankruptcy trustee to perform the duties assigned to him in the bankruptcy case in accordance with the Bankruptcy Law is mandatory;

to satisfy the claims of first and second priority creditors, as well as the claims of secured creditors who are not among the construction participants.

Otherwise, the benefit from the implementation of the competitive procedure can be (well, if only) offset by withholding amounts from sale proceeds to pay off these claims.

Secondly, legislative consolidation of the analyzed possibility will require amendments to the provisions of the Law on methods of selling the debtor's property. This conclusion is based on the following. Since the buyer will have to assume the obligation to fulfill the obligations to the construction participants to transfer the premises to them in the completed construction project, the sale of property must be carried out through a competition (Clause 5 of Article 110 of the Bankruptcy Law). Moreover,

the buyer of the property at a possible auction can be a legal entity that meets the requirements for the developer in accordance with Federal Law No. 214-FZ. Thus, the circle of potential participants will be limited. In this regard, it is hardly possible to agree with the opinion of scientists who proposed holding open tenders in the form of a competition when implementing the design under consideration[324]. The auction must be held in the form of a closed competition, although Art. 110 of the Bankruptcy Law provides for closed auctions only in relation to limitedly negotiable property.

We also note that taking into account the changes that were made to the Bankruptcy Law in July 2020, the entry into force of the new Art. 201.15-2-2 of this law, the transfer of developer's property and obligationsto another body (other than the Fund/Fund of a constituent entity of the Russian Federation) is theoretically possible, but practically unlikely[325]. Thus, if the Fund decides to finance activities to complete the construction of unfinished construction projects by assuming the developer's rights and obligations, satisfaction of the corresponding application of another body is excluded (paragraph 6 of clause 1 of Article 201.15-1 of the Bankruptcy Law). When the Fund makes a decision on the inexpediency of financing and payment of appropriate compensation to citizens participating in construction, it has the right to claim the transfer of the developer's rights to a land plot with the unfinished construction object (objects) and inseparable improvements located there. Thus, if this request is granted, there will be nothing to transfer to another developer.

Among the disadvantages of developer substitution procedure, we note the following. According to provisions of paragraph 5, clause 1, art. 201.15-1 of the Bankruptcy Law, if the developer has several land plots with inseparable improvements located there and obligations to construction participants, the requirements of which are included in the register of construction participants' claims in relation to objects to be

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[324] Chukreev A.A. Repayment of construction participants claims: a critical analysis of main provisions of legislation on developers bankruptcy. C. 74.

[325] Pleshanova O.P. Compensation mechanisms for "defrauded shareholders" in developer's bankruptcy. P. 154.

built on these land plots, these land plots and the developer's obligations may be transferred separately to one or more purchasers. However, the provisions of the Bankruptcy Law do not indicate that a determination on developer's property and obligations transfer can be made by an arbitration court in relation to all land plots at the same time. Consequently, the Bankruptcy Law only regulated the fact that in relation to different land plots (with corresponding objects), different bodies can act as acquirers within the of the debtor's bankruptcy procedure framework. However, it does not oblige potential applicants to resolve the fate of the unfinished projects of the corresponding developer in their entirety.

The implementation of these norms may lead to a situation where the most interesting objects from an investment point of view will be transferred to a new acquirer(s), and the remaining objects will remain in the bankruptcy estate. Moreover, construction participants who have entered into contracts in relation to such unattractive objects will be deprived of the opportunity to satisfy their demands through the sale of land plots (objects) of unfinished construction transferred to the new developer in the manner in which the proceeds from their sale could be distributed (Article 201.14 of the Bankruptcy Law). Since it is the Fund that has the right to determine the method of satisfying the requirements of construction participants (a number of objects can be "taken" by the Fund for completion, i.e., the procedure for developer substitution is implemented, and payments are made to citizens for the remaining objects), other creditors who are not construction participants, who had registered share participation agreements for objects that were not included in the number of those being completed, may be deprived of any opportunity to satisfy their claims in connection with the withdrawal of liquid property from the debtor's bankruptcy estate. In other words, these creditors find themselves in an unequal position compared to creditors who have entered into agreements in relation to objects for which the procedure for transferring rights and obligations to a new developer has been implemented. In this regard, it is advisable to supplement Art. 201.15.2 of the Bankruptcy Law with a rule according to which a determination on developer's property and obligations transfer can be made in

relation to all unfinished construction projects available to the developer at the same time.

Thus, the following changes must be made to the Insolvency (Bankruptcy) Law:

to achieve the purposes of Bankruptcy Law§ 7 ch. IX application Art. 201.15.2 must be supplemented with a rule according to which a determination on developer's property and obligations transfer can be made in relation to all unfinished construction projects it has at the same time;

to ensure possible effective participation in developers' bankruptcy cases of private capital funds, provide for satisfaction in the manner of paragraph 2 sub. 3 p. 1 art. 201.9 (with the possibility of receiving compensation from the Fund) not only of claims that were included in construction participants claims register after the day the Fund or the Fund of a constituent entity of the Russian Federation made a decision on financing, but also of claims included in the register after the date the arbitration court accepted the corresponding application from another body who intends to become an acquirer;

to ensure equality of secured creditors rights, regardless of the procedure applied to satisfy the demands of construction participants, add Art. 201.15-2-2 with the condition that their demands must be satisfied in the amount established by Art. 201.14 of the Law, at the expense of the Fund, and clause 14 of Art. 16 of the Federal Law of June 27, 2019 No. 151-FZ is declared invalid (as unconstitutional);

to eliminate possible disputes during the implementation of developer substitution procedure on the form of satisfying construction participants requirements, establish a rule on the transformation of monetary claims specified in subparagraph 4 paragraphs 1 art. 201.1, in requirements for the transfer, respectively, of residential premises, parking spaces and (or) non-residential premises, which are the subject of the agreement, a monetary claim of the construction participant arose in connection with its execution.

§ 3. Payment of construction participants claims by unfinished construction project transferring

Let us immediately make a reservation that the systematic interpretation of the Bankruptcy Law provisions allows us to equate the concepts of "repayment", "execution", "satisfaction". Therefore, when it comes to paying off the demands of construction participants, there is actually the same legal fiction as in the case of replacing the developer, since this implies satisfaction of construction participants demands. This method, which is often simplistically referred to as "transfer to housing cooperatives," was included in the original text of § 7 Ch. IX of the Law and represented legalization of a method already used in practice to satisfy construction participants rights. Its essence was that an initiative group of defrauded shareholders joined their efforts to complete problematic facility construction. However, the lack of legislative regulation of such actions and their "adaptation" to existing structures created new difficulties for such citizens on the way to restoring their violated rights[326]. This led Art. 201.10 appearance. It would seem that construction participants requirements meeting method enshrined in this article is quite simple. The participants decide to create a cooperative and authorize the arbitration manager to apply to the arbitration court with a corresponding petition; if the motion is satisfied, the rights to the unfinished construction project and the land plot are transferred to the cooperative after its registration. But legal content of this construction, the formulations used by the legislator, raise a number of questions.

By virtue of clause 1, clause 15 of Art. 201.10 of the Bankruptcy Law, the developer's rights to unfinished construction projects and land plot are subject to transfer to a housing construction cooperative, another specialized consumer cooperative, which was created by construction participants decision. However, the first paragraph of clause 3, sub. 3 paragraph 8 art. 201.10 of the Bankruptcy Law norms state that such

[326] Maslova E.M. Shared construction and homeowners' partnership: relationship, problems of "defrauded shareholders" rights protection. Legal science and legal education reform. 2012. № 2 (25). P. 126–130; Mashtakova N.A. Recognition of share right to unfinished construction project ownership right as a way to protect shared construction participant rights. Notary. 2011. № 2.

transfer is carried out directly to the construction participants, who contribute "the develop's rights to the unfinished construction project and land plot transferred to them" as share contributions to the cooperative they have created. There is a contradiction, and in the norms of one article.

Moreover, in paragraph 14 of Art. 201.10 of the Bankruptcy Law, the legislator specifies that the developer's rights to an unfinished construction project and a land plot are transferred to the cooperative as compensation for claims for the transfer of residential premises, claims for the transfer of parking spaces and non-residential premises and monetary claims.

According to A.A. Chukreev, although the legislator uses in Art. 201.10 of the Bankruptcy Law, the concept of compensation, it is not necessary to talk about the presence of such a method of terminating an obligation, as they say, "in its pure form," in case under consideration, since here there is no requirement under Art. 409 of the Civil Code of the Russian Federation agreement of parties. In addition, according to Art. 407 of the Civil Code of the Russian Federation, a list of grounds for termination of obligations given in Chapter. 26 of the Civil Code of the Russian Federation, is not exhaustive. By virtue of Part 1 of this article, the obligation is terminated in whole or in part on the grounds provided for by the Civil Code of the Russian Federation, other laws, other legal acts or an agreement. Thus, the mechanism for repaying the claims of construction participants against the debtor developer, enshrined in Art. 201.10 of the Bankruptcy Law, acts as another basis for termination of obligations not set by the Civil Code of the Russian Federation[327].

Some researchers believe that a method of specific civil law state-compulsory measure to protect the rights of construction participants is enshrined in Art. 201.10 of the Bankruptcy Law[328]. We cannot agree with this statement due to the following.

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[327] Chukreev A.A. Repayment of construction participants claims: a critical analysis of main provisions of legislation on developers bankruptcy. P. 60.

[328] Altukhov A.V. Civil legal protection of participants rights in shared apartment buildings construction in developer's insolvency (bankruptcy): abstract. dis. ...cand. of legal science. Moscow, 2015. P. 9.

Protection measure as a type of civil rights protecting method is aimed at restoring a violated right; its application should restore the situation that existed before the violation of the right [329]. However, in case of transfer of unfinished construction project or a land plot (the rights to it) to a cooperative created by construction participants, restoration of their rights to receive ownership of premises does not occur. This will be possible only after construction is completed based on the results of the activities of cooperative created by participants.

From our point of view, there is every reason to assert that provisions set in Art. 201.10 of the Bankruptcy Law, method of terminating obligations of debtor-builder to construction participants is compensation.

According to Art. 409 of the Civil Code of the Russian Federation, by agreement of the parties, obligation can be terminated by providing compensation - payment of funds or transfer of other property. This method of terminating an obligation presupposes the presence of two elements: an agreement reached by parties and provision of compensation in return for execution[330].

Agreement between two or more bodies on establishment, modification or termination of civil rights and obligations is recognized as an agreement (Part 1 of Article 420 of the Civil Code of the Russian Federation). What is undeniable in the doctrine is recognition that a contract is an act of will, primarily an agreement of parties[331]. Taking into account Part 2 of Art. 432 of the Civil Code of the Russian Federation provisions, an agreement (contract) is concluded by sending an offer to one of the parties and its acceptance by the other party.

Offer is a proposal addressed to one or several specific bodies, which is quite distinguished and expresses the intention of the body who made the offer to consider himself as having entered into an agreement with the addressee who will accept the offer (Part 1 of Article 435 of the Civil Code of the Russian Federation). Acceptance is the

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[329] Alekseev C.C. General law theory. 2nd edition, rewr. and add. Moscow, 2008. P. 202–205.
[330] Contract and obligation law (general part): article-by-article commentary on the articles 307–453 Civil law of the Russian Federation, resp. ed. A.G Karapetov. Moscow. M-Logos, 2017
[331] Krasavchikov O.A. Civil contract: concept, content and functions. Civil contract and its functions; intercoll. coll. of scientific tworks. Sverdlovsk, 1980. P. 10.

response of the body whom the offer about its acceptance is addressed to. Silence of the addressee is not acceptance unless otherwise follows from the law, agreement of the parties, custom or from previous business relations of the parties. The performance by the body who received an offer, within the period established for its acceptance, of actions to fulfill terms of contract specified in it (shipment of goods, services provision, work performance, appropriate amount payment, etc.) is considered acceptance, unless otherwise provided by law, other legal acts or not specified in the offer (Article 438 of the Civil Code of the Russian Federation).

The obligation in question (the obligation to transfer ownership of residential/non-residential premises, parking spaces or a monetary obligation) exists between debtor developer and construction participant. From the date the arbitration court makes a decision to declare debtor bankrupt and to open bankruptcy proceedings, the powers of the head of debtor and other management bodies of debtor are terminated, interests of debtor are represented by the bankruptcy trustee (Article 126, Article 127 of the Bankruptcy Law).

In case under consideration, we consider it possible to believe that offer is convening by bankruptcy trustee of construction participants meeting, the agenda of which includes issue of applying to arbitration court with a petition to repay their claims by transferring bankrupt developer rights to a housing construction or other company created by construction participants specialized consumer cooperative. Taking into account composition of the materials to be considered by construction participants meeting, requirements for bankruptcy truste's conclusion content on the possibility or impossibility of such a transfer, it can be argued that this offer contains all the essential conditions of a possible compensation.

In turn, construction participants accept the offer sent to them in this way either directly (by voting "for" at a meeting on this issue) or indirectly, through silence (by not voting at the meeting or refraining from indicating their position)[332], i.e. an agreement is

[332] Determination of the Constitutional Court of the Russian Federation dated December 20, 2018 № 3229-O; Resolution of the Arbitration Court of the Far Eastern District dated July 16, 2018 № F03-2618/2018.

reached between initial obligation parties (debtor and construction participant). The construction participants who refused to transfer unfinished construction project and land plot rights to consumer cooperative remain in the register of the debtor's claims (exclusively with monetary claims), i.e. the initial obligation between them and debtor does not stop.

If the arbitration court satisfies arbitration manager's petition, construction participants, in return for their right of claim against the debtor, are granted the right to a share in a housing construction or other specialized consumer cooperative-unfinished construction project owner, a land plot (right to a land plot). Claims against the debtor are considered extinguished and are excluded from the register of creditors' claims.

Thus, enshrined in Art. 201.10 of the Bankruptcy Law, the method of paying off the claims of construction participants must be recognized as compensation.

To analyze the composition of members of a housing and construction cooperative to be created, or another specialized consumer cooperative, we turn to the provisions of the Bankruptcy Law, as well as regulatory legal acts that regulate the activities of cooperatives to be created in accordance with Art. 201.10 of the Bankruptcy Law, i.e. the Civil Code of the Russian Federation, the Housing Code of the Russian Federation, Federal Law of December 30, 2004 No. 215-FZ "On Housing Savings Cooperatives".

In accordance with sub. 3 paragraph 8 art. 210.10 of the Bankruptcy Law, all construction participants whose claims are included in the register of construction participants' claims must become members of the newly created cooperative, with the exception of those participants who refused to transfer unfinished construction project to cooperative.

According to the current version of the Bankruptcy Law, legal entities are not considered participants in construction. However, Law provisions are not subject to application to bankruptcy proceedings that were initiated before the relevant amendments were made to it, in cases where settlements with third-priority creditors have begun, i.e. here legal entities act as participants in construction.

Bankruptcy Law sub. 3 paragraph 8 art. 201.10 contents state that such legal entities that voted for creation of a cooperative must be its members. But the correctness of this statement can be called into question when analyzing the provisions of paragraph 2, paragraph 7 of the said article. This paragraph is devoted to the procedure for resolving situation when premises in the object to be transferred upon completion of its construction are not enough to satisfy all participants requirements included in construction participants requirements register. As a way to "overcome" such a discrepancy with conditions for unfinished construction project transfer, the legislator establishes the possibility of individual construction participants refusing to receive these premises. It also provides that "citizens participating in construction or legal entities participating in construction who refused to receive residential premises claims are converted into monetary claims in the manner established by this Federal Law and are subject to repayment as part of creditors' claims of the third and fourth respectively queues."

The grammatical (philological, linguistic) interpretation of the cited norm can be twofold.

1. When combining the linguistic method with the systemic one, we can conclude that this norm provided consequences for construction participants (legal entities, citizens) who refused to receive premises in construction site in the manner established by paragraph 1 of the same clause 7. Therefore claims of only those construction participants - legal entities who refused to receive premises - are converted into monetary claims.

2. Supporters of a literal philological interpretation of the norm may note that in order to consolidate relevant provisions in sense given to the second paragraph of clause 7 of Art. 201.10 of the Bankruptcy Law by adherents of a systematic interpretation, legislator could use other linguistic expressions. Thus, for these purposes, there was no need to separately name construction participants - citizens and construction participants - legal entities. That is, the paragraph could be formulated as follows: "At the same time, the demands of construction participants who refused to receive residential premises are transformed into monetary demands..."

Therefore, when formulating this paragraph, legislator pursued a different goal - exclusion of legal entities from the number of participants in the created cooperative, even in cases where they are construction participants. This point of view is also supported by the idea, consistently implemented by the legislator, of the complete exclusion of legal entities (professional participants in the turnover) from the number of participants in construction, which in the bankruptcy procedure occupy a privileged position in comparison with other creditors.

Being supporters of a systematic interpretation of the relevant provisions, we share the first point of view. Additionally, we note that opinion on the complete exclusion of legal entities from the list of construction participants by the Bankruptcy Law cannot indicate the mandatory exclusion of membership of legal entities in the cooperative. Contents of paragraph 2, clause 7, art. 201.10 was not edited during the amendments to the Bankruptcy Law, when legal entities were excluded from the number of construction participants. This norm appeared when legal entities were full participants in construction, so the legislator, when formulating it, could not pursue the goal that confronted him much later.

Thus, the Bankruptcy Law Art. 201.10 provisions content states that all bodies (individuals, legal entities) who are classified as construction participants in the relevant procedure can be members of the cooperative.

The general legal definition of consumer cooperative concept, which is contained in Part 1 of Art. 123.2 of the Civil Code of the Russian Federation also allows for legal entities to participate in a consumer cooperative: a consumer cooperative is a voluntary association of citizens and legal entities based on membership in order to satisfy their material and other needs, carried out by pooling property share contributions by its members.

By virtue of Part 1 of Art. 110 of the Housing Code of the Russian Federation, a housing or housing construction cooperative is recognized as a voluntary association of citizens and, in cases established by law, the Housing Code of the Russian Federation, and other federal laws, of legal entities on the basis of membership in order to meet the needs of citizens for housing, as well as apartment building management.

Creation in accordance with Art. 201.10 of the Bankruptcy Law on Housing-Construction Cooperative in debtor bankruptcy procedure, in which legal entities are included among construction participants, can be considered a case where federal law provides for the participation of legal entities in a housing-construction cooperative.

In the opposite way, this issue is resolved when creating another consumer cooperative - a housing savings cooperative. In accordance with sub. 1 art. 2 of the Federal Law of December 30, 2004 No. 215-FZ "On Housing Savings Cooperatives" a housing savings cooperative is a consumer cooperative created as a voluntary association of citizens on the basis of membership in order to meet the needs of cooperative members in residential premises by uniting share contributions of the cooperative members. In other words, only citizens exclusively can participate in a cooperative, and the purpose of its activities is to satisfy the needs of its members for residential premises (a legal entity cannot have such a need). Art. 5 of the mentioned Law contains an imperative norm that a citizen who has reached the age of sixteen years can be a member of a cooperative.

In accordance with paragraph 9 of Art. 201.10 of the Bankruptcy Law, in the creation of a housing construction cooperative or other specialized consumer cooperative, along with construction participants, other bodies, including legal entities, may participate in cases where there will be more residential premises, parking spaces, non-residential premises after completion of construction than needed to meet the requirements of all construction participants. In connection with the above, to meet the requirements of construction participants, it is preferable to create a housing or housing construction cooperative. This choice is also supported by clause 4 of Art. 5 of the Federal Law "On Housing Savings Cooperatives", which states that the number of members of a cooperative must be at least fifty. Despite the fact that the construction project may not contain such a number of premises (for example, a block of flats).

It would be appropriate here to consider the rights of creditors who are not construction participants, but their claims against the debtor are secured by unfinished construction project pledge, a land plot, which will be transferred to the cooperative. By virtue of Art. 201.10 of the Bankruptcy Law, such creditors do not have the right to claim membership in the cooperative. At the same time, a positive resolution of petition

to satisfy construction participants demands by transferring bankrupt developer rights to unfinished construction project and land plot to the newly created cooperative is not possible in the absence of secured creditors consent or deposit of funds in the amount sufficient to satisfy their claims (subclause 1, clause 1, article 201.14 of the Law on Bankruptcy).

A number of researchers believe that this provision of the Law needs to be changed. In is indicated in particular that the Law in this part does not take into account the financial situation of construction participating citizens, who will already be forced to bear additional costs for its completion. In this regard, it is proposed to assign obligation to make payments in favor of secured creditors to a self-regulatory organization, where developer is a member[333].

We believe, however, that the opinion on securing membership possibility of secured creditors in the created cooperative with payment of their existing claims to developer for funds under agreements payment on ownership of non-residential premises transfer as share contributions not meeting the requirements of sub. 3.1 clause 1 art. 201.1 of the Law on Bankruptcy, residential premises, parking spaces (in relation to legal entities that are not participants in construction) is more justified[334]. To protect the interests of other creditors, it is advisable to foresee that only a part of the claim that corresponds to the amount to be repaid from the pledged property can be contributed as a share contribution.

There is a proposal in the literature to include the developer himself among the members of the cooperative. In particular, this will be possible in cases where the value of the developer's rights to an unfinished construction project and a land plot exceeds the total amount of construction participants claims included in construction participants claims register, and their claims apply to part of premises, i.e. the transferred site has premises free from construction participants rights [335].

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[333] Solosina D.V. Problems of exercising shared construction participants rights in developer's bankruptcy. Law, society, state: history, modern trends and development prospects. Collection of scient. works of International extramural student scient.-pract. conf. Voronezh. Rythm, 2017, P. 437.
[334] Osipova I.Yu. Legal status of shared construction participants in relation to non-residential premises in developer's bankruptcy. P. 102–103.
[335] Chukreev A.A. Repayment of construction participants claims: a critical analysis of main provisions of legislation on developers bankruptcy. P. 62.

We believe that this proposal deserves attention; it allows us to overcome the condition provided by legislator for satisfying a request for unfinished construction project and a land plot rights transfer without additional investments on the part of construction participants, such as depositing an amount that exceeds the permissible limit of five percent. At the same time, this norm must be dispositive in nature, so that the decision on method of fulfilling condition provided by legislator (by depositing the appropriate amount or by including developer among the members of the cooperative) is made at the discretion of construction participants.

Let's consider how transferring an unfinished construction project to a cooperative differs from replacing a developer.

1. Transfer of an object to a housing cooperative is possible only if construction participants meeting decides to go to court with a corresponding petition[336], i.e. the activity and position of construction participants is of significant importance here.

Developer substitution is initiated by the Fund or a body who meets the requirements for developer by Federal Law № 214-FZ.2.

2. To complete facility construction, construction participants who become members of cooperative contribute additional funds within the period established by the charter of the created cooperative (subclause 3, clause 8, article 201.10 of the Bankruptcy Law). Science has expressed an opinion that this is clearly unfair, since construction participants have already properly fulfilled their obligations under contracts with bankrupt developer[337]. However, there is no other source of financing facility construction completion with this method of satisfying their requirements.

When replacing adeveloper, construction financing is carried out at the expense of the acquirer of his rights and obligations.

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[336] Zaporoshchenko V. Features of protecting construction participants rights in developers' bankruptcy. 2017. № 3–4. P. 76; Plastinina N. Bankruptcy of developer - where is the way out??? Housing law. 2017. № 6. P. 7 and next.

[337] Nikiforov S.Yu. Problematic issues of shared construction participants rights protection when changing a developer. Synergy of Sciences. 2017. T. 2. № 18. P. 30.

3. When replacing a developer, satisfaction of construction participants requirements to obtain ownership of residential premises, parking spaces, and non-residential premises is ensured by the following factors provided by law.

Firstly, a professional market participant is on the acquirer's side, i.e. only the Fund or the Fund of the Russian Federation constituent entity, which has relevant experience due to the goals of their activities, or a body who meets developer's requirements in accordance with Federal Law No. 214-FZ provisions.

Secondly, guaranteed availability of resources from the acquirer to finance facility construction completion.

If the Fund is the acquirer, then financing decision is supported by its property. If this is another legal entity, it must confirm its ability to finance facility construction completion.

In addition to the fact that compliance with these conditions is established by the arbitration court when considering statement of intent, it is confirmed by the Ministry of Construction of the Russian Federation by issuing an appropriate conclusion.

When responsibility to complete the object is assumed by a cooperative, the likelihood that the designated goal will be achieved is significantly lower[338]. The cooperative itself will not be able to carry out facility construction and, accordingly, will have to attract a contractor, a technical customer, for this purpose. The cooperative does not have the experience to properly monitor the activities of these bodies and their compliance with the obligations assumed under agreements concluded with the cooperative[339]. There are no guarantees of these bodies integrity. Besides, there can be no assurance that construction participants who have become members of the cooperative will ultimately be able to provide financing for facility construction completion in the required amount.

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[338] Barabina M.P. Replacement of the developer during his bankruptcy. Problems of losses recovery in the Russian legal order: collection of articles. Art. VI Annual International scientific-practical conf. Moscow Acad. economics and law, 2016. P. 463.

[339] Korobchenko R.I., Yevglevskaya Ye.S. On issue of legislative regulation of construction organizations bankruptcy (developers). Young scientist. 2017. № 10. P. 315; Savostyanova O.N. Mechanisms for protecting shared construction participants rights in developer's bankruptcy: legislation and judicial practice. P. 30.

We believe that it is precisely for these reasons that the legislator introduced a direct ban on possibility of implementing the enshrined in Art. 201.10 of the Bankruptcy Law method in cases where settlements with a developer, in respect of whom a bankruptcy procedure has been opened, were carried out under agreements for shared construction participation using escrow accounts (clause 4 of Article 201.12-2 of the Bankruptcy Law). In case of developer insolvency, the return of funds to such construction participants is ensured by their depositing in escrow accounts.

This mechanism of settlements under agreements for shared construction participation was positively assessed by theorists and practitioners, since the level of guarantees for the return of funds deposited into escrow accounts to participants in shared construction is quite high[340] and the Fund will not need to incur additional costs. In turn, the risk that the cooperative created by the construction participants will not be able to complete the construction of the facility is significant, and resolving possible difficulties at this stage will require the Fund's participation (Article 13.3 of Federal Law No. 218-FZ).

4. Both methods provide for equal security of creditors' interests of the first and second priority, as well as creditors whose rights of claim are secured by a pledge of property to be transferred to the acquirer or cooperative.

Literature indicates that the requirements of Art. 201.10 of the Bankruptcy Law in part where its rules force construction participants, in addition to facility construction completing costs, to incur additional costs to satisfy creditors' relevant claims, that is, to pay off the claims of debtor-developer[341]. However, this point of view can be argued. The condition for satisfying the request to pay off the claims of construction participants is the fulfillment of those specified in subparagraph 2 clause 3, clause 5 art. 201.10 of

[340] Rukovichko K.A. Protection of shared construction participants property rights. P. 129–132; Ulmaskulova D.R. Peculiarities of legal entities bankruptcy whose main activity is residential and non-residential buildings construction. Current issues of sustainable development of Russia in student research: managerial, legal and socio-economic aspects: materials of the XVI Russian stud. scientific-practical conf. Resp. ed. S.V. Nechaeva. Chelyabinsk: Chelyabinsk branch of Russian Federation. acad. pub. households and state services, 2018. P. 291–292.

[341] Barabina M.P. Legal regulation of developers' insolvency (bankruptcy): dis. ...cand. of legal science. Ulyanovsk, 2019. P. 130.

the Bankruptcy Law on Claims of Creditors. It seems that this rule, even within the framework of special rules for developers' bankruptcy, allows one to follow the general principle of bankruptcy legislation regarding compliance with the order of creditors' claims satisfaction.

However, with a common approach in both special procedures to satisfying requirements of a higher priority (in comparison with construction participants), fourth-priority creditors interests, who do not have the right to pledge property subject to disposal from debtor's bankruptcy estate, are respected differently in this regard.

Thus, when replacing a developer, developer's rights value to a land plot with inseparable improvements located on it must be less or equal to the total amount of construction participants claims included in construction participants claims register. The bankruptcy law does not allow the possibility of transferring to a new developer property whose value exceeds the value of obligations transferred to it, without transferring the amount of the excess to debtor's bankruptcy estate.

In turn, as already noted, construction participants who became members of cooperative will be forced to incur additional costs to complete construction. Therefore, legislator allows the possibility of transferring property to a cooperative created by participants, the value of which exceeds the total amount of their claims, but this excess cannot be more than five percent. The difference in excess of the permissible five percent excess is subject to compensation to debtor by construction participants at creditors fourth priority transfer consent absence, adopted by a qualified majority of three-quarters votes. Because facility construction will be completed at construction participants expense, such legislator's loyalty is quite understandable. But the following circumstance attracts attention.

To calculate the permissible "liability" excess, total amount of construction participants claims included in construction participants claims register is taken into account. However, some participants may vote against developer rights transfer to cooperative and, accordingly, not become its members. These participants' claims will not be repaid after unfinished construction project transfer; they will remain in third and fourth stages of creditors' claims register, respectively. When paying compensation to

such bodies, the Fund will have an opportunity to carry out procedural replacement in creditors' claims register and take their place, i.e. the amount of creditors' claims will not decrease.

Considering the above, it seems reasonable when calculating property value ratio to be transferred to cooperative with volume of assumed obligations to construction participants (members of cooperative) to take into account only the total amount of voting construction participants claims or those who did not take part in the voting, i.e. bodies who are members of the established cooperative.

We also note that, by virtue the Bankruptcy Law paragraph 14 of Art. 210.10 provisions, even construction participants claims who have become cooperative members are not repaid in full. In debtor claims register, the repayable amount is equal to his rights value ratio to unfinished construction project with a land plot and the total amount of construction participants claims included in construction participants claims register. Therefore, partial repayment of construction participant claim register is possible in cases where transferred to the cooperative property value is less than construction participants obligations value. It would seem that in such a situation, there is no unjustified extraction from the debtor’s bankruptcy estate of property, the value of which exceeds the volume of accepted obligations, to other creditors interests detriment. However, construction participants claims who have become cooperative members will not be repaid in full and will continue to compete with fourth-line creditors’ claims. Therefore, it is advisable to enshrine provisions according to which not just the total amount of construction participants claims - established cooperative members, but the total amount of part of their claims that is subject to repayment based on the ruling of arbitration court, should be subject to accounting. At the same time, for purposes under consideration (observing fourth stage creditors interests), when determining repaid claims proportion, it would be fair to take into account, again, the total amount of claims not of all construction participants, but only of construction participants who became members of the created cooperative.

Considering the fact that legislator, when formulating sub. 1 clause 3 art. 201.10 of the Insolvency (Bankruptcy) Law has already provided for a mechanism for considering fourth priority creditors interests (if criterion for permissible excess debtor's property value transferred to cooperative is not met, they must give consent), inclusion in sub. 1 clause 3, clause 14 art. 201.10 of the Bankruptcy Law proposed changes would be entirely appropriate. Otherwise, the barrier created by legislator against unjust enrichment of construction participants at the expense of other creditors[342] will not be fully realized.

5. The condition for a positive resolution of petition to satisfy construction participants demands by transferring developer's rights to the established cooperative is that debtor developer has ownership rights to unfinished construction project (subclause 5, clause 3, article 201.10 of the Bankruptcy Law).

In turn, Art. 201.15-1 of the Bankruptcy Law does not contain such a requirement. To replace a developer, it will be sufficient for the bankrupt developer only to have rights to the land plot that is intended for facility construction. This condition must be met when creating a housing cooperative. However, only this is not enough.

Let us note that before changes that were made to the provisions of § 7 of Chapter IX, including Art. 201.15-1 of the Bankruptcy Law in 2018, entry into force in order to replace a developer, debtor is also required to have unfinished construction project ownership. However, often during construction process (after its suspension), developers do not register rights to this object; their investments in its construction on a land plot represent inseparable improvements to the land plot, which are registered as a real estate object with its registration in EGRN only upon commissioning. Therefore, legislator excluded requirement that a bankrupt developer has ownership rights to an unfinished construction project from conditions for replacing a developer. If arbitration court satisfies relevant request, land plots (rights to land plots) intended for unfinished construction projects placement, inseparable improvements on such land plots (including

[342] Chukreev A.A. Repayment of construction participants claims: a critical analysis of main provisions of legislation on developers bankruptcy. P. 77.

these objects, respectively, if any) are subject to transfer (Article 131 of the Civil Code RF, Federal Law of July 13, 2015 No. 218-FZ "On State Registration of Real Estate").

These changes seem justified; registration of investments in an unfinished construction project itself does not complicate or simplify further actions upon its construction completion. However, this requirement actually obliges bankrupt debtor to bear, at bankruptcy estate expense, additional costs for carrying out cadastral work, registering property with cadastral register, and registering ownership (clause 1 of Article 201.15-1 of the Bankruptcy Law). Thus, other creditors interests are infringed, who are already not on equal rights with construction participants in developer's bankruptcy proceedings. In addition, when registering ownership rights to an object, not only financial but also legal difficulties may arise, due to which the registration of such rights will be possible only in court, which will further delay the resolution of the issue of transferring the object for completion and early of construction participants restoration rights [343].

We believe that the absence in Art. 201.10 of the Bankruptcy Law, provisions similar to the analyzed norms of Art. 201.15-1, is caused solely by the fact that Art. 201.10 in recent years "fell out" of legislator's attention, its editing was carried out on a "residual" principle, appropriate changes were made to it only in cases where this was required to achieve the main goal for which another amendments pack adopted. Thus, in 2018, changes to Art. 201.10 of the Bankruptcy Law were introduced because the list of "special" requirements, the owners of which are provided with special protection of their interests in developer's bankruptcy procedure, was supplemented with requirements for parking spaces and non-residential premises transfer. In 2019, it was edited in connection with legal situation regulation in the bankruptcy procedure of the Fund developer. The main content of regulating object construction transfer to a cooperative has been preserved almost in its original form[344].

It should be noted that although creation by construction participants of a housing construction cooperative or other specialized consumer cooperative is not a priority

[343] Nekrasov O. S. Bankruptcy of developers. Arbitration manager. 2014. № 6. P. 28.
[344] Mandryukov A.V. Some features of developers' bankruptcy cases. 2014. № 9.P. 75–76.

way to satisfy their requirements, formally the provisions of § 7 presuppose the preferential implementation of this particular method. Thus, the presence of an unresolved petition by arbitration court to repay construction participants claims by transferring developer's rights to a housing construction cooperative created by construction participants or another specialized consumer cooperative is an obstacle to satisfying the statement of intent in accordance with the Bankruptcy Law subparagraph 1 clause 11 art. 201.15-1. In this regard, in order to preserve Art. 201.10 as part of § 7 of Chapter IX of the Bankruptcy Law, it is necessary to ensure that its contents comply with all other current "progressive" provisions of special rules governing developer's bankruptcy.

At the same time, requirement that developer has ownership rights to an unfinished construction project enshrined in Art. 201.10 of the Bankruptcy Law forces us to address object legal regime issue in question.

For the first time, an unfinished construction project was classified as a real estate property in clause 2 of Art. 25 of the Federal Law of July 21, 1997 No. 122-FZ "On state registration of real estate and transactions rights." This status for objects for which there is no valid construction contract was also recognized by law enforcement practice[345]. Corresponding provision was introduced into Art. 130 Civil Code of the Russian Federation[346]. However, the above circumstances did not resolve ongoing in the doctrine disputes regarding legal regime and status of these objects. Some researchers highlight as their main feature the lack of permission to put the facility into operation in the manner prescribed by law[347]. Others name among them certain socio-economic conditions that contribute to emergence of such object (lack of funding, unstable economic situation), object conservation, achieving a certain degree of readiness[348].

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[345] Clause 16 of the Resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation dated February 25, 1998 № 8 "On some issues in the practice of resolving disputes related to the protection of property rights and other property rights"

[346] Federal Law of December 30, 2004 № 213-FZ "On Amendments to Part One of the Civil Code of the Russian Federation"

[347] Valeev R.A. Legal regime of an unfinished construction project: abstract. dis. ...cand. legal sci. Kazan, 2007. pp. 7, 8.

[348] Gasanov M.M. Legal regime of unfinished construction projects; abst. dis. ...cand. of legal science. Moscow, 2011. P. 6, 7.

According to classical approach, unfinished construction object as an object of real estate arises only from the moment it has a strong connection with land, and is in such a degree of readiness itself that it allows one to determine and describe the coordinates of characteristic points of its contour for purpose of placing it on accounting[349]. It seems, however, that some clarifications are required here [350]. So, according to D.Yu. Patyutko correct opinion, firstly, an unfinished construction project is a property complex that includes not only things, but also rights with a monetary value, including protected results of intellectual activity necessary for the creation (reconstruction) of a building or structure. Secondly, there are two types of unfinished construction projects: those that include real estate and, accordingly, are an immovable property complex, and those that include movable property, which is why they are a movable property complex[351].

Indeed, if the construction of an object has begun but is not completed, it cannot be said that the object did not arise. Another thing is that until the moment when it has not reached the degree of readiness at which it can be described for the purposes of cadastral registration, it cannot be classified as real estate. To some extent, legislator accepted this position (it is also typical for legislation of other countries[352]) when amending Art. 201.15-1 and Art. 201-15.2 of the Bankruptcy Law governing developer substitution. Today, they provide that a new developer, along with to land plot rights, is given the rights to inseparable improvements located on such a plot, including an unfinished construction project. This formulation allows us to say that until developer's ownership of such an object state registration, the inseparable improvements created on the land plot also constitute a similar object, but without real estate characteristics.

The question of state registration legal nature, its title-giving or law-confirming

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[349] Shalaginov K.K. Legal regime of an unfinished construction project: theory and practice; abst. dis. ...cand. of legal science. Rostov on Don, 2009. C. 9, 10.

[350] Krushevskaya M.V. Unfinished construction project ownership in developer's bankruptcy case. Science and education: farming and economics; entrepreneurship; law and administration. 2011. № 12 (18). P. 57.

[351] Patyutko D.Yu. Unfinished construction object as a civil law category: abst. dis. ...cand. of legal science. Moscow, 2011. P. 7, 8.

[352] Mustafina Z.K.Acquisition of ownership rights to unfinished construction projects in Russia and the CIS countries. Legal issues of construction. 2013. № 1.

nature is also debatable[353]. The following can be said about this. An unfinished construction project arises from the moment the first tangible results of construction activity (land plot inseparable improvements) appear, regardless of its readiness degree, therefore the act of state registration of developer's ownership rights to such an object is only of a legal nature.

The Russian Federation legislation directly relates to cases of state registration law-confirming nature of property rights the transfer of property rights in universal succession order (inheritance, reorganization), emergence of property rights of a member of the corresponding cooperative upon full payment of a share contribution for property provided by cooperative to this body[354]. We believe that this should also include ownership registration case of an unfinished construction project by the owner of a land plot provided for its construction.

6. By virtue of Art. 201.10 of the Bankruptcy Law, in order to pay off construction participants claims, the developer’s rights to an unfinished construction project, a land plot, are transferred to cooperative they created. The provisions of this article do not provide for other improvements or rights transfer. In turn, when developer is replaced by acquirer of developer’s rights and obligations, in addition to land plot rights, inseparable improvements (including an unfinished construction project), project documentation rights, which includes all changes made, developer’s rights and obligations with design organization under agreements, technical customer, general contractor, other agreements concluded for unfinished construction completing projects by bankruptcy manager during bankruptcy proceedings, right to claim connection (technological connection) of the facility to engineering support networks under agreements concluded by developer in relation to transferred land plots with inseparable improvements located there.

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[353] Shalaginov K.K. Legal regime of an unfinished construction project: theory and practice; abst. dis. ...cand. of legal science. Rostov on Don, 2009; Krushevskaya M.V. Unfinished construction project ownership in developer’s bankruptcy case. P. 56.

[354] Civil law, в 2 v. 3d ed., rewr. and add., ed. by B.M. Gongalo. Moscow, Statut, 2018. V.1.

Transfer of exclusive rights to land plot and object located there to a new developer was also initially provided when replacing a developer. However, legislator later clarified that a new developer, in fact, receives the entire scope of rights and obligations under contracts and obligations that were concluded by previous developer for purpose of constructing and putting into operation a facility.

We believe that these changes were due to an analysis of the practice of applying Art. 201.15-1, art. 201.15-2 of the Bankruptcy Law, the difficulties that new developers encountered in fulfilling their obligations to complete facility construction. Thus, project documentation developers could declare that a new developer does not have rights to project documentation (which is an independent object of copyright by virtue of Article 1259 of the Civil Code of the Russian Federation), to use it, including through practical implementation (subclause 10 p. 2 Article 1270 of the Civil Code of the Russian Federation), since these rights were not transferred in the manner prescribed by law. In turn, a new developer could not present project documentation developers a requirement to eliminate the shortcomings identified during its use.

New developer's lack of rights under agreements for technological connection, especially in cases where such agreements were concluded by a bankrupt developer and technological connection payments were made, put network organizations in an unreasonably preferential position. They received funds from the debtor, fulfilled their obligations to carry out technological connection activities, but the facility was not built, and therefore they are not obliged to carry out the actual technological connection, nor to return the funds (formally, the network organizations fulfilled their obligations under the contract, they cannot connect unfinished facility to the networks due to circumstances that are beyond their control). At the same time, a new developer did not have the right to demand from network organizations fulfillment of obligations under technological connection "old" contracts and was forced to re-apply for relevant contracts conclusion and bear the costs of paying for technological connection. Besides terms of technological connection for a network organization were calculated only

from the date of new contract conclusion[355], which could have a negative impact on construction completion.

As a result the Bankruptcy Law Art. 201.15-1, art. 201.15-2 provisions have been finalized.

Lack of relevant provisions in Art. 201.10 of the Bankruptcy Law, we believe, is also due to the "residual" principle of regulating this method of satisfying construction participants demands, the same reasons why the debtor's ownership of an unfinished construction project is a condition for arbitration court to satisfy a petition for transferring it to housing cooperative.

Taking into account the above, we consider it appropriate to supplement Art. 201.10 of the Bankruptcy Law with provisions on transfer to a cooperative created by participants, besides rights to a land plot with object located there (including inseparable improvements), also rights to project documentation, including all changes made to it, rights and obligations of developer under agreements with design organization, technical customer, general contractor, other agreements concluded for the purpose of completing unfinished construction projects by bankruptcy manager during bankruptcy proceedings, rights of claim for connection (technological connection) of object to engineering networks technical support under contracts concluded by developer in relation to transferred land plot with inseparable improvements located there.

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[355]Rules for technological connection of power receiving devices of electrical energy consumers, electrical energy production facilities, as well as electrical grid facilities belonging to network organizations and other bodies to electrical networks (approved by Decree of the Government of the Russian Federation dated December 27, 2004 No. 861); Rules for connecting (technological connection) of capital construction projects to gas distribution networks, as well as for amending and invalidating certain acts of the Government of the Russian Federation (approved by Decree of the Government of the Russian Federation dated December 30, 2013 No. 1314); Decree of the Government of the Russian Federation dated November 30, 2021 No. 2130 "On approval of the Rules for connecting (technological connection) of capital construction projects to centralized hot water supply, cold water supply and (or) sanitation systems, on amending certain acts of the Government of the Russian Federation and declaring certain acts invalid of the Government of the Russian Federation and the provisions of individual acts of the Government of the Russian Federation"); Rules for connection (technological connection) to heat supply systems, including rules for non-discriminatory access to services for connection (technological connection) to heat supply systems (approved by Decree of the Government of the Russian Federation dated July 5, 2018 No. 787).

7. As already mentioned, Art. 201.15-1, art. 201-15.2 of the Bankruptcy Law do not contain provisions on possibility of satisfying a statement of intent only in relation to all the developer's obligations to construction participants, which cannot be considered justified, is a lack of legal regulation of developer substitution. In contrast to this, paragraph 16 of Art. 201.10 of the Bankruptcy Law stipulates that decision of construction participants meeting, arbitration court ruling in relation to all objects available to developer (respectively, in relation to all construction participants claims) are made simultaneously.

Summarizing the above, we note that implementation of the following proposals will contribute to increasing the efficiency of this method of satisfying construction participants requirements, such as unfinished construction project or a land plot transfer to a housing construction or other specialized consumer cooperative created by construction participants.

To increase procedure efficiency for meeting construction participants requirements:

exclude from the list of conditions the observance of which is mandatory, the existence of debtor developer's right of ownership to unfinished construction project;

to consolidate provisions on transfer to created by participants cooperative, in addition to rights to a land plot with the object located there (including inseparable improvements), also rights to project documentation, which includes all changes made to it, rights and obligations of a developer under contracts with design organization, technical customer, general contractor, other agreements concluded for the purpose of completing unfinished construction projects by the bankruptcy manager during bankruptcy proceedings, rights of claim for connection (technological connection) of object to engineering support networks under agreements, concluded by developer in relation to transferred land plot with inseparable improvements;

provide for secured creditors who are not participants in construction the possibility of membership in a newly created cooperative with payment as share contributions of their claims to developer for funds under agreements payment that are provided

for non-residential premises ownership transfer, which do not meet the requirements of clause. 3.1 clause 1 art. 201.1 of the Law on Bankruptcy, residential premises, parking spaces (in relation to legal entities that are not construction participants) to the extent that corresponds to the amount to be repaid from the pledged property established by sub. 1 clause 1 art. 201.14 of the Bankruptcy Law;

extend provisions on satisfaction in order of paragraph 2 sub. 3 p. 1 art. 201.9 of the Bankruptcy Law (with the possibility of obtaining compensation from the Fund) of construction participants claims for those construction participants whose claims were included in the register after the date of acceptance of the motion to repay the claims of construction participants by transferring the developer's rights to the unfinished construction site and land plot - stock to a housing construction cooperative or other specialized consumer cooperative created by construction participants.

In order to maintain construction participants interests balance, who will be forced to incur additional costs of facility completion within the cooperative activities framework they created, with creditors of the fourth stage interests, it is necessary to foresee the total amount of claims of only construction participants who became members of the created cooperative, and only in that part that is subject to repayment in bankrupt developer creditors' claims register.

CONCLUSION

The conducted research allowed us to draw the following conclusions.

Construction industry is one of the most dynamically developing industries and the most important sector of the Russian economy. Moreover, housing construction has not only economic but also social significance.

Formed in the late 1990s – early 2000s the situation in which, in construction organizations bankruptcy, it was not possible to satisfy, as a matter of priority, the demands of citizens to obtain ownership of the housing they financed, necessitated the development of special rules for regulating developer's insolvency (bankruptcy) - Chapter IX of the Bankruptcy Law was supplemented with the provisions of §7. The content of these norms has a clear social orientation and represents a striking example of general trend implementation towards the socialization of Russian civil law. Over the next ten years, changes were repeatedly made to the legislation on developer's insolvency (bankruptcy) aimed at strengthening the construction participating citizens rights protection, also by increasing the role of government agencies (mainly the Fund) in developer's bankruptcy procedure.

At the same time, analysis of the Bankruptcy Law Chapter IX §7 norms showed that there are contradictions between them when determining the content of the concept of a developer, regulating the priority of satisfying the demands of construction participants on penalties payment, sources (methods) of financing activities upon unfinished construction projects completion. To eliminate such contradictions, the work formulates proposals to introduce appropriate changes to the Law.

Besides, in practice problems arise in protecting construction participating citizens' rights in cases where they have demands for shared construction objects transfer in the same construction project, but to different debtors. To make it possible to use the special methods set by §7 norms in such situations to satisfy such citizens' demands, the possibility of combining bankruptcy cases of several debtors into one proceeding should be fixed at the resolution level of the Plenum of the Supreme Court of the Russian Federation.

Questions also arise in practice when applying the norms of subsection. 1 clause 1 art. 201.14 of the Bankruptcy Law. The conclusion has been made about unjustified extension of procedure provided for therein exclusively to cases of pledged construction projects and land plots implementation. The work provides recommendations on the procedure for applying this norm in its relationship with the Bankruptcy Law Art. 201.9 provisions, proposals have been formulated to consolidate the possibility of satisfying claims in a developer's bankruptcy case in a special manner when selling any of its pledged property. To ensure compliance with secured creditors rights, it is proposed to make additions to the Bankruptcy Law Art. 201.15-2-2 provisions.

A set of proposals has been formulated to improve the legislation on developer's insolvency (bankruptcy), aimed at ensuring that unscrupulous participants in the turnover do not have advantages in satisfying their claims against developer over other creditors, and at ensuring control over compliance with the rights of bona fide participants in civil legal relations.

Detailed comparative analysis of the provisions provided for in § 7 ch. IX of the Bankruptcy Law on ways to satisfy construction participants demands made it possible to identify certain imperfections in the legal structures proposed by the legislator, their contradiction with the general provisions of civil legislation, gaps in the regulation of relevant relations, and the presence of outdated norms in this area. Taking into account these and other problems, specific proposals for improving legislation have been formulated.

The results of the study can be used as a basis for further scientific developments on this topic, as well as in law enforcement practice.

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Supplement

PROPOSALS TO AMEND LEGISLATION ON INSOLVENCY (BANKRUPTCY)

Federal law dated 26 October 2002 № 127-FZ «On insolvency (bankruptcy)»

1. In article 201.1:

a) subparagraph 1 of paragraph 1 after the words “residential premises” should be supplemented with the words “requirements for parking spaces and non-residential premises transfer”;

b) supplement with point 2.6.1. of the following content:

"2.6.1. A construction participant has the right to apply to an arbitration court to declare the developer bankrupt in case when developer has not fulfilled obligation to transfer ownership of residential premises, parking spaces, or non-residential premises within a period exceeding the period established by contract for transfer of such an object by two months”;

c) in paragraph 8, the words “Decree on introduction of external management” should be replaced with the words “Decree on acceptance of application for declaring debtor bankrupt, determination on external management introduction”.

2. Article 201.2. should be supplemented with paragraph 3 as follows:

“3. Bodies who entered into an agreement, as a result of which claim rights to developer for transfer of residential premises, parking spaces, non-residential premises were transferred to them after date of initiation of developer’s bankruptcy case by arbitration court, as well as their legal successors, have the same scope of rights in developer’s bankruptcy case of possessed by body who ceded such rights”.

3. In Article 201.4, paragraph 15, after the words “unfinished construction”, add words “either after the day arbitration court accepts a statement of intent from another body who intends to become acquirer of rights and obligations of developer, or after the day arbitration court accepts a petition to pay off claims of construction participants

by transfer of developer's rights to an unfinished construction project and a land plot to a housing construction cooperative or other specialized consumer cooperative created by construction participants."

4. In article 201.8-1:

a) in paragraph 1, the first sentence should be stated as follows: "Measures to complete of unfinished construction projects building in respect of which funds were raised from participants in shared construction, infrastructure facilities and engineering and technological connection facilities specified in paragraph 1 of Article 201.15-2-1 of this Federal Law, can be carried out at expense of a targeted loan (credit) issued to developer by the Fund and (or) third parties";

b) in paragpraph 1.1

in the first sentence, replace the words "with the Fund" with the words "with legal entities";

in the third sentence, replace the words "other bodies" with the words "individuals";

5. In paragraph 1 of Article 201.8-2, the first sentence should be stated as follows: "In case when bankruptcy trustee (external manager) concludes during bankruptcy proceedings (external management) contracts providing for residential and non-residential premises transfer, and (or) financing of measures to complete construction objects of unfinished construction, as well as infrastructure objects and objects of engineering and technological connection specified in paragraph 1 of Article 201.15-2-1 of this Federal Law by providing developer with targeted loans (credits) by the Fund and (or) third parties, the bankruptcy manager (external manager) a special bank account for developer is opened on behalf of developer, to which funds for such transactions are to be credited."

6. Clause 3 of Art. 201.9 shall be stated as follows: "3. Creditors' claims for obligations secured by a pledge of debtor's property are satisfied at the expense of value of pledged item in manner established by Article 201.14 of this Federal Law.".

7. In article 201.10:

a) the title of the article should be stated as follows:

“Article 201.10. Repayment of construction participants claims by transfer of a land plot (rights to a land plot) with inseparable improvements there”;

b) paragraph 1 should be stated as follows:

“If developer has a land plot (rights to a land plot) with inseparable improvements there, bankruptcy trustee, within period established by provisions of paragraph 1 of Article 201.12-1 of this Federal Law, is obliged to submit for consideration of construction participants meeting the issue of applying to arbitration court with a petition for construction participants claims repayment by transferring developer's rights to a land plot with inseparable improvements there (including an unfinished construction project) to a housing construction cooperative created by construction participants or another specialized consumer cooperative (hereinafter referred to as unfinished construction project transfer). In this case, repayment of construction participants claims by transferring unfinished construction project to a housing construction cooperative created by construction participants or another specialized consumer cooperative is possible if such construction participants refused to receive compensation in accordance with paragraph 14 of Article 201.15-1 of this Federal Law";

c) subparagraph 2 after the words “unfinished construction project” should be supplemented with the words “the volume of improvements made on the land plot are inseparable”;

d) in point 3

in paragraph one, delete the words “participants in construction”;

subparagraph 1, after the words “construction participants demands register”, add the words “those who voted for unfinished construction project transfer, who are members of established cooperative”,

e) in subclause 3 of clause 8, the words “transferred developer’s rights to unfinished construction project and land plot” should be replaced with the words “rights of claim against developer in part that is subject to repayment by providing

compensation in accordance with paragraph 14 provisions of this article";

f) in point 14

the second paragraph after the words "construction participants demands register" should be supplemented with the words "those who voted for unfinished construction project transfer and who are members of established cooperative";

add paragraph six with the following content: "The demands of construction participants for collection of penalties (fines, penalties) and other financial sanctions are satisfied as part of creditors' claims of fourth priority";

g) paragraph 15 should be stated as follows:

"Simultaneously with of unfinished construction project transfer (developer's rights to a land plot with inseparable improvements on it (including an unfinished construction project)) to bankruptcy trustee of a housing construction cooperative or other specialized consumer cooperative, on the basis of an arbitration court ruling on unfinished construction project transfer, rights to project documentation, including all changes made to it, rights and obligations of developer under agreements with design organization, technical customer, general contractor, other agreements concluded for the purpose of completing construction of unfinished construction projects by bankruptcy trustee during bankruptcy proceedings, rights of claim for connection (technological connection) of facility to engineering and technical support networks under agreements concluded by developer in relation to transferred land plots with inseparable improvements located on it.

State registration of transfer of developer's rights to a land plot with inseparable improvements theren (including an unfinished construction project) to a housing construction cooperative or other specialized consumer cooperative is carried out after state registration of such a cooperative on the basis of an application from developer represented by bankruptcy trustee and a ruling of arbitration court on transfer of unfinished construction object. From the moment of registration of rights transfer, unfinished construction project ownership (if developer has such rights at the time of transfer), ownership or rights and obligations of tenant in relation to land plot, ownership rights to inseparable improvements located on the land plot are transferred to such cooperative ,

rights to project documentation, including all changes made to it, rights and obligations of developer under contracts with design organization, technical customer, general contractor, other contracts concluded for purpose of completing construction of unfinished construction projects by bankruptcy trustee during bankruptcy proceedings, rights requirements for connection (technological connection) of facility to engineering and technical support networks under agreements concluded by developer in relation to transferred land plots with inseparable improvements located on it".

8. In paragraph 7 of Article 201.11, paragraph four should be declared invalid.

9. In paragraph 1 of Article 201.14, the words "of a construction project owned by developer under ownership right, and a land plot owned by developer under ownership right or other right (including lease, sublease)" should be deleted.

10. In Article 201.15-1, subclause 1, subclause 2 of clause 11, after the words "this article", add the words "2.1. Art. 201.15-2 of this Federal Law."

11. In article 201.15-2:

a) add clause 2.1. in the following wording: "If developer has several unfinished construction projects (including in the form of land plots, rights to land plots, inseparable improvements on them), arbitration court's ruling on transfer of developer's property and obligations to acquirer(s) is made in relation to all objects (land plots) simultaneously";

б) paragraph 6, after the words "are considered repaid", add the words "the monetary claims specified in paragraph 2, paragraph 4, paragraph 5 of subparagraph 4 of paragraph 1 of Article 201.1 of this Federal Law are transformed into requirements for transfer, respectively, of residential premises, parking spaces and (or) non-residential premises that are the subject of an agreement, in connection with execution of which a monetary claim of a construction participant arose, information about which was included in construction participants claims register in accordance with paragraph 3 of Article 201.5 of this Federal Law."

12. In Article 201.15-2-2 in paragraph 4, replace the words "subparagraph 2 of paragraph 3, paragraphs 5, 7 and 10" with the words "subparagraphs 2, 3 of paragraph 3, paragraphs 5–7 and 10."

Federal Law of December 30, 2004 No. 214-FZ

“On participation in shared construction of apartment buildings

and other real estate objects

and on amendments to some legislative acts

of the Russian Federation"

Article 1 shall be supplemented with part 4.1 as follows:

“4.1. From the date of initiation of bankruptcy proceedings for developer, the parties are obliged, when concluding an agreement (agreement) on assignment of claims rights under the agreement, to indicate in the text of such agreement (agreement) information about initiation of a bankruptcy case against developer, the number of such case”.