

REGARDING DEFINITION OF THE CONCEPT OF «OBJECT OF UNFINISHED CONSTRUCTION» IN FORENSIC APPRAISAL AND CONSTRUCTION ENGINEERING

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Annotation. At present, forensic appraisal and construction examination to determine the cost of unfinished construction is assigned during investigation and consideration of various categories of cases. The research objects while conducting appraisal and construction examination are various types of real estate. In current regulatory legal acts, there are contradictions and inconsistencies regarding definition of unfinished construction object and its belonging to movable or immovable property. Many domestic scientists have paid their attention to definition of the concept of unfinished construction object. However, definitions of this concept proposed by them are not based on a single approach that would fully satisfy the needs of theory and practice of forensic science. The results of the analysis of current legislation allow us to state that at present there is no single approach to defining concept of an unfinished construction object. This article proposes an interpretation of the concept of unfinished construction object formed on the basis of an analysis of existing provisions of legislative acts, achievements of practitioners, generalizations and systematization of achievements of theory of this direction, and identification of signs of an unfinished construction object. Based on the analysis results of terms contained in previous and current regulatory legal acts and the statements of scientists, a definition of an unfinished construction object is proposed: *“Unfinished construction object is an integral improvement of a land plot, which creation was started on the basis of all necessary permitting and design documents, without their deviations and violations of building norms and rules, the construction of which is either suspended (cancelled), or the object is not put into operation in accordance with the requirements of current legislation.”* It is noted that currently valid construction and regulatory legal acts are insufficient for conducting forensic examinations on the evaluation of unfinished construction objects, since they lack a complete and unified algorithm for research on evaluation of unfinished real estate objects depending on the type of real estate objects, degree of readiness, purpose of determining value, etc.

Key words: forensic science, unfinished construction, real estate, forensic expert conclusion, appraisal and construction engineering, regulations, legislation, current, terminology, construction objects, appraisal.

1. Introduction.

Forensic appraisal and construction expertise is appointed during consideration of various categories of cases: criminal proceedings (during appropriation of State or private property or its destruction); civil cases (during distribution of residential building or determining the ownership of a part of the house; invalidation of purchase and sale agreement; on compensation for material and moral damage); economic disputes (in cases of debt for the construction, repair or reconstruction of state, private and other forms of ownership); enforcement proceedings (during collection of debts); in international courts (determining amount of compensation for damage or destruction of real estate as a result of Russian aggression), etc.

Property that is subject to appraisal by forensic engineers unites various types of real estate: buildings, structures, engineering networks and equipment, elements of improvement, etc. It should be noted that concept of real estate is regulated by the current legislation.

Thus, in accordance with Art. 181 of the Civil Code of Ukraine “real estate (real estate includes land plots, as well as objects located on a land plot, the movement of which is impossible without their depreciation and change of their purpose” [1]. We emphasize that based on the above, the main specific of property is its inextricable connection with the land plot.

We emphasize that according to the degree of readiness, all real estate objects (construction) can be divided into two large groups: completed construction and unfinished construction. However, there is no single approach to the definition of the concept of *object of unfinished construction* at the legislative, theoretical and practical levels and quite often existing definitions contain opposite scientific approaches. Based on the above research, the issue of defining concept of construction object in progress is relevant and needs to be addressed for further application by forensic engineers during forensic research.

Results of the analysis of the existing legislation allow us to assert that at present there is no single approach to defining the concept of an object of unfinished construction, in particular, in the Law of Ukraine: *On Guaranteeing Property Rights to Real Estate Objects to Be Constructed in the Future*, National Standard № 2: *Valuation of Movable Property*, Order of the State Property Fund of Ukraine: *On Approval of the Classifier of State Property*. In addition, in some normative legal acts, namely the Civil Code of Ukraine and the Resolution of the Cabinet of Ministers of Ukraine: *Acceptance of completed construction objects for operation*, there is no concept definition of object of unfinished construction at all, instead, these normative legal acts contain its individual signs.

2. Analysis of scientific publications.

Ukrainian scientists, including: A.S. Savchenko, H.R. Matsiuk, E.Ts. Batuiyeva, S.M. Slipchenko, Yu.O. Khodyko, A.O. Synelnykova and others, paid their attention to the definition of object of unfinished construction. However, it should be emphasized that there is still no unified position among scientists on the definition of real estate object concept, let us cite the statements of some of them.

In research papers by A.S. Savchenko, it is proposed to consider a newly created real estate object that arose in connection with active human actions as an object of construction in progress [2 p. 61-68]. However, such a position does not fully reflect the definition of object of unfinished construction, but only identifies certain of its signs.

Yu. O. Khodyko called an object of unfinished construction an integral property complex, which price is based on the percentage of readiness, structure state, geographical location, etc. [3, pp. 89-95]. However, this concept definition does not reflect the legal regime of objects, but only forms an approach to determining price of this type of object.

S. S. Slipchenko's research papers define unfinished construction as integral object, not as a set of building materials and considers it as a material for future structures [4, p. 17-25].

A. S. Matsiuk has a different position, who proves in his researches that object of unfinished construction consists of property that has not been completed by construction, as well as building materials that were used while building this object and became its integral part [5, pp. 12-20].

However, their proposed definitions of this concept do not rely on a single approach that would fully meet the needs of theory and practice of forensic science.

3. The aim of the work.

We emphasize that concept definition of unfinished construction site remains relevant and has not yet been fully resolved.

This article proposes a concept interpretation of unfinished construction object formed on the basis of an analysis of existing provisions of legislative acts, best practices of practitioners, generalizations and systematization of the achievements of theory of this area and identification of signs of unfinished construction object.

4. Review and discussion.

According to Art. 1 of Law of Ukraine: *On Guaranteeing Property Rights to Real Estate Objects to Be Constructed in the Future* [6], an object of unfinished construction is a divisible object of unfinished construction and an indivisible object of unfinished construction. Indivisible object of unfinished construction is an object of real estate that will be constructed in the future (building, structure), for which the right to perform construction work has been obtained and which has not been put into operation, provided that such an object does not include future real estate objects. Indivisible objects of unfinished construction are divided into:

- indivisible residential objects of unfinished construction: objects that, in accordance with the classifier, belong to residential buildings;
- indivisible non-residential objects of unfinished construction: objects that, in accordance with the classifier, belong to buildings of non-residential and engineering structures.

Divisible object of unfinished construction: object of immovable property that will be built in the future (building, structure), in respect of which the right to perform construction works has been obtained and which has not been put into operation, provided that at least two future real estate objects are provided as part of such an object by the project documentation for construction.

Instead, in accordance with National Standard No. 2: *objects of unfinished construction*: buildings, structures or transmitting devices that are actually not operated due to the fact that they are in an unfinished state) [7]. It should be noted that in accordance with this standard, buildings, structures and transmitting devices refer to land improvements, that is, these are material objects located within the land plot, which movement is impossible without their depreciation and change of purpose).

Concept definition of objects of unfinished construction as objects that were started by construction and not put into operation, including mothballed objects is provided in the Order of the State Property Fund of Ukraine: *On Approval of the Classifier of State Property* [8].

The Resolution of Cabinet of Ministers of Ukraine: *Issue of Commissioning of Completed Construction Objects* does not include the concept of unfinished construction object, however, before its commissioning, the unfinished construction object refers to the real estate object [9].

According to Part 1 of Article 181 of the Civil Code of Ukraine, immovable property (real estate) includes land plots, as well as objects located on a land plot, the movement of which is impossible without their depreciation and a change in their purpose [1]. According to Parts 2 and 3 of Article 331 of the Civil Code of Ukraine, right of ownership to newly created real estate (residential buildings, buildings, structures, etc.) arises from the moment of completion of construction (creation of property). If the contract or law provides for the acceptance of real estate for operation, the right of ownership arises from the moment of its acceptance for operation. If the right of ownership to real estate is subject to state registration in accordance with the law, the right of ownership arises from the moment of state registration. Until the completion of construction (creation of property), a person is considered the owner of materials, equipment, etc. that were used while constructing (creation of property). In other words, until the completion of construction work and, if necessary, acceptance of the real estate object into operation, the object of unfinished construction belongs to movable property.

It should be noted separately that Part 1 of Article 376 of the Civil Code of Ukraine states that a residential building, structure, or other immovable property is considered unauthorized construction if it is built or is being built on a land plot that has not been allocated for this purpose, or without a relevant document giving the right to perform construction works or a properly approved project, or with significant violations of building codes and regulations. Therefore, if an unfinished construction object is built with deviation from the granted permits, project, or with a significant violation of building codes, then this object is considered unauthorized construction.

5. Conclusions.

Based on the analysis results of the above terms containing the current regulations and statements of domestic scientists, we propose the following definition of the object of unfinished construction: *The object of unfinished construction is an integral improvement of the land plot which creation began on the basis of all necessary permits and design documents, without their deviations and violations of construction norms and rules, the construction of which is either suspended (conserved) or the object is not put into operation in accordance with the requirements of current legislation.*

We emphasize that currently valid construction and regulatory legal acts are not sufficient for conducting forensic examinations on the evaluation of unfinished construction objects, since they lack a complete and unified algorithm for research on the evaluation of unfinished real estate objects depending on the type of real estate objects, degree of readiness, purpose of determining the value, etc.

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