

By the Judgement of 21 July 2022 №34-П the Constitutional Court assessed the constitutionality of Article 16 (parts 14 and 17) 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 Certain Legislative Acts of the Russian Federation" and Certain Legislative Acts of the Russian Federation" (hereinafter referred to as the Amendment Law), Article 201¹⁰ (item 5), Article 201¹⁵ (second paragraph of item 2), Article 201¹⁵⁻¹ (subparagraph 1 of item 8), Article 201¹⁵⁻² (item 11) of the Federal Law "On Insolvency (Bankruptcy)".

The subject of consideration were the provisions of parts 14 and 17 of Article 16 of the Law on Amendments in conjunction with paragraph 11 of Article 201.15-2 of the Federal Law "On Insolvency (Bankruptcy)" to the extent that within the current legal framework in the event of the developer's bankruptcy they served as basis to decide upon the issue of terminating the security rights of creditors who are not participants in the construction in the situation of transferring a land plot, an unfinished construction project to a fund created to protect the rights of citizens – participants in a shared construction; consideration involved situations where the relevant obligations are not related to ensuring the rights of construction participants, the payment of fair compensation is not foreseen and the termination of rights is performed by extinguishing the registration records in the Unified Register of Real Estate on the security of the developer's rights to the land plot with the inseparable improvements located on it.

The said provisions were found to be inconsistent with the Constitution of the Russian Federation to the extent that within the current legal framework they do not provide for necessary legal guarantees for the protection of the rights of creditors who are not participants in the construction, upon termination of their pledge rights in connection with the transfer of a land plot, an unfinished construction project to a fund operating for the purpose of protecting the rights of citizens – participants in shared construction, within the framework of the case on bankruptcy of the developer.

In addition, the subject of consideration involved provisions of item 5 of Article 201¹⁰, the second paragraph of item 2 of Article 201¹⁵, subparagraph 1 of item 8 of Article 201¹⁵⁻¹ of the Federal Law "On Insolvency (Bankruptcy)" to the extent that these provisions served as basis to decide upon the issue concerning possibility of paying off creditors' claims for current payments that do not relate to the first priority current payments, for reimbursement of expenses ensuring the completion of bankruptcy proceedings, at the expense of the fund for the protection of the rights of citizens – participants in a shared construction, which acquires developer's facilities within the bankruptcy case.

These provisions were also found to be inconsistent with the Constitution of the Russian Federation to the extent that within the current legal framework they

do not allow the relevant repayment of creditors' claims for current payments unless it follows from the circumstances of the case (including the volume of claims against the developer, including those secured by collateral), that the amount of debt or at least a significant portion of it would not have been received by creditors for current payments even if the property had not been transferred to the fund; and even regardless of this condition – in terms of current payments to satisfy claims for payment of wages to the developer's employees who are or have been working (after the date of acceptance of the application for declaring the debtor bankrupt) under an employment contract directly on the unfinished construction project that has been transferred to the fund.

Until the relevant amendments are made, parts 14 and 17 of Article 16 of the Law on Amendments in conjunction with item 11 of Article 201¹⁵⁻² of the Federal Law "On Insolvency (Bankruptcy)" shall be applied by the courts taking into account the following.

Persons who were previously secured creditors of the developer, to whom the fund acting for the purpose of protecting the rights of citizens participating in shared construction has no obligations to provide premises, in connection with the termination of the pledge, have the right to demand from the fund which has acquired developer's rights to relevant property amounting to major amount of the debt on obligation secured by the pledge and the interest due, without resuming the accrual of interest, but not more than the value of the subject of the pledge on the date of the decision of the arbitration court on the transfer of the relevant property to the fund (in total for all persons who were previously secured creditors). These demands are subject to satisfaction by the fund in the following order:

by distributing among persons who were previously secured creditors obligations to whom have not been repaid by that time proportionally to the amount of these obligations, a portion of the proceeds from the sale by the fund of premises in the unfinished construction project except for those subject to transfer to construction participants under obligations assumed by the fund; the amount of the relevant portion of the proceeds shall be established by the court taking into account the aggregate amount of claims of persons who previously were secured creditors to the fund, the volume of work required to put the unfinished construction project into operation, and other circumstances affecting the fund's expenses in connection with participation in legal relations regarding this project; the fund, if it is possible taking into account the stage of construction and in accordance with the rules (standards, regulations) ensuring safety of capital construction projects, must take measures to increase the area of premises in the unfinished construction project in such a way as to satisfy as much as possible, at the expense of these premises, the claims of persons who previously were the secured creditors, without prejudice to other obligations related to the completion of construction;

to persons who were previously secured creditors for such obligations of the

developer, the emergence of which was a crucial condition for the construction of an apartment building (related to the provision of a real estate object, the provision of funds as a loan or investment, without which the construction could not have been carried out), as well as to persons who were previously secured creditors by virtue of the law for the developer's obligations to transfer to them shared construction objects, the payment obligations for which they have fully fulfilled, the fund, regardless of the sale of premises in the unfinished construction object, also pays in the manner prescribed by Article 201¹⁰ (item 6) of the Federal Law "On Insolvency (Bankruptcy)", unless another procedure is determined by the court, an amount established by the court on the basis of an equal percentage ratio for all such persons (but in any case not more than fifty percent) to the amount of their claims to the fund, taking into account the aggregate amount of claims of such persons, the volume of work necessary to put the unfinished construction object into operation, and other circumstances affecting the fund's expenses in connection with participation in legal relations under regarding this object; the court determines the deadline for payment of corresponding amount, and the transfer of developer's rights to corresponding property to the fund is not conditioned by the implementation of such payment.

The corresponding obligations of the fund shall be deemed to be repaid if the amount of payments in accordance with the two above paragraphs of this Judgement has reached the amount of the claims of the person who was previously the developer's secured creditor to the fund, or if this amount has not been reached, but the fund's ability to sell the premises in the unfinished construction project has been exhausted, and the payment, if provided for in accordance with the preceding paragraph of this Judgement, has been made.

The persons who were previously secured creditors also retain the right to satisfy monetary claims in the bankruptcy procedure of the developer in the appropriate order, so that the total satisfaction of the claims of these persons by the fund and in the bankruptcy procedure does not exceed the amount of the principal amount of the debt and interest on the obligation previously secured by the pledge. In the event of such an excess, its amount is returned by the persons who were previously secured creditors to the fund within the limits of the fund's obligations to them repaid.

Conclusion of unconstitutionality Parts 14 and 17 of Article 16 of Federal Law No. 151-Φ3 of 27 June 2019, in conjunction with item 11 of Article 201¹⁵⁻² of the Federal Law "On Insolvency (Bankruptcy)" cannot be grounds for cancelling the decision to transfer developer's rights to relevant property to the relevant fund acting for the purpose of protecting the rights of citizens participating in shared construction, and for refusal to fulfill its obligations, as well as an obstacle to such transfer of rights to the fund and the fund's assumption of the relevant obligations.