

Legal Analysis and Suggestions on the "Sale" of Mechanical Parking Spaces

-- Based on the Property Law of the People's Republic of China

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Abstract

In the legal analysis of the sale of machinery parking spaces, the essence and legal disputes of the parking spaces should be clarified first. By consulting the relevant cases and laws and regulations of mechanical parking spaces, I analyze the main legal disputes existing in the market, and make plans and suggestions on promoting sales of mechanical parking spaces by analyzing and handling the dispute issues.

Keywords

Mechanical parking space; Ownership dispute; Contract dispute.

1. Concept and Market Status of Mechanical Parking Space

At present, with the increase in the number of private cars, "parking difficult" problem is significant. Thus, the mechanical parking space of "asking for space in the air" came into being. But the actual situation is that its utilization rate is generally low, which not only fails to effectively alleviate the problem of "parking difficulty", but also causes some developers to waste resources and deposit funds.

Different from the ordinary parking space in fixed position, the so-called mechanical parking space is a mobile non independent space, which must rely on the overall operation of machinery and space exchange to achieve the purpose of individual parking space. Because the mechanical parking space has the advantages of "small area, high space utilization rate", now it is widely built in many large residential areas. Mechanical parking spaces are also different from public parking spaces (The public parking space in the public parking lot refers to the vehicle distribution place specially designated by the transportation department for vehicle parking. It is an important part of the road system, and the property right belongs to all owners). As the mechanical parking space is a mobile and non- independent space invested and built by the developer, generally, a single mechanical parking space can not be sold directly or registered. Adhering to the principle of "who invests, who owns, who benefits" (Article 25 of the regulations on the administration of the development and utilization of urban underground space issued by the Ministry of housing and urban rural development of China stipulates that underground projects shall be allowed to be self operated or transferred or leased in accordance with the law by construction units on the basis of the principle of "who invests, who owns, who benefits and who maintains"), only the owner developer can transfer and lease the property. Because the relativity of creditor's rights has more restrictions on buyers than exclusive and absolute property rights, buyers hold a hesitant and wait-and-see attitude, which makes it difficult for developers to recover investment and poor management.

2. Possible Problems in Sales of Mechanical Parking Spaces

2.1. Ownership of Mechanical Parking Spaces

As mentioned above, the use of mechanical parking space is special, which needs to be realized by the way of parking equipment lifting, translation and other exchange space. The single mechanical parking space is essentially a mobile non independent space, which is not consistent with the basic requirements of China's real estate registration treaty (Article 5 of China's Provisional Regulations on real estate registration stipulates that real estate unit refers to the space with closed ownership boundary and independent use value); According to the housing registration measures implemented on July 1, 2017, mechanical and three-dimensional parking spaces are not included in the scope of real estate property right registration, so it is impossible for individual buyers (usually only buy one parking space) to obtain the property right of parking spaces. Second, through the brief introduction of the use of mechanical parking spaces, another practical problem of mechanical parking spaces is that the mechanical parking spaces can not be fixed. If the mechanical parking spaces are sold as ordinary fixed parking spaces, then the buyers need to park the car to the specific location of the purchase every time they park, which is unrealistic. Therefore, from the perspective of practical operation, mechanical parking spaces alone can not be sold directly.

Due to the lack of legislation, most prospective buyers think that if they do not register their property rights, their rights can not be protected. They only obtain the right to use through leasing, which is low cost-effective and has hidden dangers, so they can not accept the mechanical garage. At the same time, it also brings pressure on developers. The rental income is often not as good as the sale. In addition, the construction cost, maintenance cost and human investment of mechanical parking spaces can not be recovered. If the buyers have been waiting and waiting, idle equipment will cause the developers to deposit funds.

2.2. Rent or Sell -- The Essence of "Sales Contract" of Single Mechanical Parking Space in the Current Market

Due to the short-term leasing, developers have great financial pressure and it is difficult to realize their assets and interests as soon as possible. At present, the "sale" mode of single mechanical parking space in the market is "rent for sale", that is, through signing a 20-year lease contract at one time (Article 214 of China's contract law stipulates that the lease term shall not exceed 20 years. If it has been more than 20 years, the excess part shall be invalid), the parking space can be used free of charge after expiration or given another 20 years after expiration. In principle, this clause does not violate the prohibitive provisions, and does not exceed the scope of its disposal right. According to the average total cost of the clause, the annual parking fee is very low. But in fact, there are irrationality and risk of breach of contract in the "20-year lease" clause, which has a long term and is prone to change. For example, based on the legal provisions that "the parking space should give priority to meet the owner's right to use, and can be rented out after meeting the owner's needs", the developer may be unable to guarantee the continuous performance of the contract due to the change of the owner in the later period, and damage the rights and interests of the external buyers; And for the parking space rental fee of 20 years of a sexual intercourse, the buyer may think that he has lost the right of independent choice, and even think that the developer is suspected of "abusing the dominant position".

2.3. High Maintenance Cost of Mechanical Parking Spaces

Generally speaking, the developer and the individual buyer sign the "mechanical parking space use right transfer agreement" on the mechanical parking space, and agree on the term of use right. After the parking space is delivered for use, the parking space management fee and various repair and maintenance fees shall be borne by the buyer. As the relevant special equipment in the mechanical parking space must be maintained and maintained according to

the relevant agreement, this part of the cost will also be "shared" with the buyer. Therefore, I think that the buyer's deterrence makes part of the mechanical parking space in the "stop" state, which has a great relationship with the higher maintenance cost of special equipment compared with the fixed parking space.

3. Legal Analysis and Suggestions on the Above Mechanical Parking Space "Sales"

To sum up, the current problem of mechanical parking space is how to make the buyer not only break the risk of only leasing right, obtain individual ownership and other related rights, but also solve the practical problems caused by the mobility of other parking spaces in the actual operation of mechanical parking space, and make the developer get the maximum sales money. The above is a win-win situation.

First of all, to solve the problem that the mechanical parking can not be registered separately, it is suggested that the developer can register a mechanical parking unit as a whole when making the initial registration. Because a mechanical parking unit as a whole (common specification: there are six common parking spaces in the same mobile non independent space, and the six common parking spaces form a whole), its location is specific, it is immovable (the operation of vehicle carrying board also belongs to the internal activities of the unit), it has obvious boundaries, and it is individual and limited in number, In line with the basic requirements of China's real estate registration treaty, we can apply for the whole real estate registration of mechanical parking unit.

After the mechanical parking unit is registered as a whole, it can be transferred according to the share or sold as a whole. Taking into account the greater protection of the buyer's rights, especially the registration of the property rights of the individual parking spaces of the individual buyers (only purchasing 1-2 mechanical parking spaces), and the possible transfer of the rights related to the sale and rental of the individual parking spaces, In my opinion, the sale of mechanical parking spaces is most suitable for the relevant provisions of the property law of the people's Republic of China on "co ownership by shares" (Article 94 of the property law of the people's Republic of China stipulates that the joint owners shall have the ownership of the common real estate or chattel according to their shares - dividing the mechanical parking units as a whole according to the actual number of parking spaces they contain (generally, 6 parking spaces are divided into 6 parking spaces), and individual buyers can register their property rights and transfer their shares in the future. In addition, in the share based co ownership, each co owner uses and benefits the common property according to his share, and the exercise of this right extends to all the common property, so each buyer can "benefit" the whole parking space according to his parking space. This can not only solve the problem that the operation of mechanical parking spaces needs the mobility of other mechanical parking spaces, but also solve the practical problems of the property registration of individual buyers and the possible sale, rent and other related transfer rights. As a result, the application of law will also be clear - the provisions of the property law on share by share can be applied to the repair, maintenance and external liability of mechanical parking units in the future. Finally, from the perspective of developers, the sale of parking spaces with individual property rights that can be registered by shares will achieve faster income and higher income than the long-term rental of single parking spaces, which can effectively reduce the problems of developers' difficulty in recovering investment and capital deposition.

Finally, considering the problem of customers' conflict with mechanical parking space due to the high maintenance cost of mechanical parking space. From the perspective of illegal learning, high maintenance cost and high risk of mechanical failure are the main sales bottlenecks in addition to the ownership of property rights. The scarcity of urban parking space makes the

mechanical parking space become an inevitable trend. However, based on the characteristics of mechanical parking spaces, why mechanical parking spaces are still not recognized for their low price compared with ordinary parking spaces? In my opinion, in order to reduce the antagonism of customers, in addition to expecting the relevant national departments to introduce more humanized policies, developers should also establish a long-term mechanism and establish public praise. For example, we can publicize and focus on the excellent after-sales service in the later stage, and we can also use the preferential charging mode of free in the first year to attract customers and increase sales. In the long run (generally speaking, the ordinary parking space in the community is limited, and the owners will definitely choose the mechanical parking space), it is also one of the ways to get the maximum sales money.

4. Conclusion

With the improvement of people's living standards, real estate developers have increased the construction of overhead garage and three-dimensional garage. However, due to the current legal vacuum, the ownership of underground garage in residential areas is not clear, which has caused a lot of legal disputes.

This paper is only a preliminary analysis of the legal attribute of underground garage, leading to the deep legal research problem of the absence of space right in China's legal system. The related problems need to be studied and solved in the future.

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