

Original Paper

Dilemma and Analysis of Installing Elevators in Old Residential Buildings under the “One-vote Veto System”

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Abstract

With the gradual entry into the aging society, the installation of elevators in existing residential buildings has gradually become an important “people’s livelihood” issue of social concern. But the transformation process has been slow. This paper believes that the “One-vote Veto System” is an important obstacle to the slow progress. The “One-vote Veto System” violates the legislative spirit of the Property Part of the “Civil Code” and should be considered by balancing the interests of various parties.

Keywords

Installing Elevators Old Residential Buildings One-vote Veto System

1. The Contradiction and Urgency of Installing Elevators in Aging Communities is Increasingly Prominent

With the promotion of urbanization, people’s living standards and material conditions have been greatly improved. The renovation of elderly facilities in old residential areas has become one of the important contents in the field of people’s livelihood. Most elderly people still live in old residential areas. As an important part of the renovation of old residential areas and barrier-free public space planning, the installation of elevators in existing residential buildings is an important livelihood initiative to deal with the aging problem of urbanization. Promoting the installation of elevators in existing residential buildings can better deal with the people’s livelihood predicament caused by urbanization and aging in a transitional society, and is also an important practice to solve the shortage of infrastructure supply for the elderly at home.

Faced with the growing desire of residents to install elevators in old residential areas, local governments and their functional departments are also actively planning and promoting the installation of elevators in existing residential areas, but the progress is slow. As of June 29, 2017, only 45

elevators had been installed in Beijing despite years of efforts to upgrade old buildings with elevators, but 43 of them were installed in one residential area alone. In addition, the number of successful elevator installation cases in Shanghai, Nanjing, Harbin, Xi'an and other cities only number in single digits. In particular, Chengdu implemented the Administrative Measures for the Addition of Additional Electric Elevators at Existing Residential Buildings on December 18, 2015, but the implementation is slow and difficult due to limitation by the requirements such as the consent of all owners with respect to the addition of an elevator unit.

Taking Beijing as an example, although the installation of elevators for existing residential buildings has long been on the government's livelihood project agenda, several authorities of Beijing Municipality jointly issued the Guiding Opinions on Adding Elevators for Existing Multi-Storey Residential Buildings in Beijing as early as 2010. However, the principle of applying for adding elevators, i.e. "the application shall be subject to the consent of the property owners in the unit which will be directly affected by the lighting, ventilation and noise caused by the addition of elevators", endows the property owners with the "veto power" against the adding of elevators. This has become a major obstacle to the implementation of practical works. Currently, there are 2.37 million elevator-less units from the 4th to the 6th floor in Beijing, including 44,000 units for central units and 1.93 million units for city-owned units. All the units which have successfully added elevators are directly owned by central government and fully funded by the government, and no city-owned units have been successfully added.

2. "One-Vote Veto System" Becomes the Key Factor Hindering Elevator Installation

The working thought of a local government of controlling contradictions at the source establishes a "one-vote veto system" for the installation of elevators in existing residences, in other words, some administrative measures specify that "a written agreement shall be reached by the owners of the unit where the elevator is located and the agreement is notarized by a notary organ, so as to reduce the occurrence of contradictions at the source", or "the consent of the owners of the unit who are directly affected by the lighting, ventilation and noise after the installation of the elevator shall be obtained" and so on. Finally, after the preliminary work, often because a floor of one or two low-level users because of cost, noise and other issues raised objections, making the preliminary work "in vain", resulting in the project on hold.

3. "One Ballot Veto System" Violates the Legislative Spirit of the Part of Property Right of the Civil Code

With regard to the issue of installing elevators on existing houses, some local governments usually formulated relevant administrative measures for the purpose of avoiding disputes; the "one-vote veto system" prescribed in such measures does not clearly define the owners' rights and interests and is not appropriate in itself. The establishment of voting right in the Property Rights Law shall not be confused

with the establishment of policy promotion as prescribed in the Administrative Law.

3.1 There Are Fundamental Differences between the “One-Vote Veto System” and the Property Rights Law in Terms of Manner of Denial

Only Articles 279, 970 and 974 of the Civil Code appear in the whole Civil Code, and the word “unanimously approved” appears in these three articles, but such three articles do not apply to the installation of elevators. However, in Article 278 (Note 1) of the Civil Code, any resolution may be passed so long as the number of votes required for passing the resolution is satisfied. The result of the voting shall not be affected whether the other votes vote against the resolution or abstain from voting.

In addition, the weighting of an owner’s voting rights is linked to the exclusive area he owns. Due to the introduction of the condition “area” in the voting on resolutions under Article 278, for example, when an owner has purchased a house with the exclusive area more than 1/3 of the houses in the community, if that owner declines to vote or votes against the resolution on matters specified in Section 1 (6) to Section 1 (8), the vote is void or rejected. If an owner has purchased a house with the exclusive area more than half of the houses, then all matters must be voted with the participation of this owner, and approved by this owner in order to be passed. In such a case, the owner has “the veto”.

3.2 The Owner Has the Right to Vote, not a Veto

There is a misconception that all people are equal before the law and that in a voting, the affirmative vote shall be the majority vote, and that to ignore his objection is an infringement of his right. Such an idea is wrong and confuses the right to vote with the right to decide. According to Article 33 (Note 2) of the Constitution and Article 4 of the Civil Code, the equality of all is reflected in the equal right to vote, not the right to decide. No one has the right to influence the will of another person, but it is the number of votes, not the will of a person, that determines the results of a vote. So in the relevant elevator litigation, there has never been a majority owner who sued for the minority owner “not to oppose” or “agree”, because every owner’s voting right is protected by law.

3.3 Owners’ Co-Ownership Is not Joint Ownership and Cannot Use Article 301 of the Civil Code to Claim the Veto Right

It is wrong to think that joint ownership in Article 301 of the Civil Code should be used to claim the consent of all the owners.

In joint ownership, the common property is not divided into shares. During the period of joint ownership, the jointly owned thing cannot be divided into parts and enjoyed by each joint owner respectively, but each joint owner enjoys its ownership, the right of each joint owner extends to all the jointly owned thing. Owners’ co-ownership obviously does not conform to this characteristic. For example, income from elevator or wall advertising is owned by all the owners, but is divided in accordance with the law.

In addition, the owner’s common part and the exclusive part are bound to each other and inseparable. If the owners’ co-ownership is joint ownership, in combination with Article 301 (Note 3) of the Civil Code, the owner must obtain the consent of the other owners when he sells his house.

In addition, generally speaking, there are three types of joint ownership: (i) Property jointly owned by the

spouses. (ii) Property jointly owned by the family. (iii) Property inherited in common. There is no joint ownership of the owners. Therefore, Article 301 of the Civil Code does not apply to joint ownership with the owners, but Article 308 (Note 4) of the Civil Code should be applied to be regarded as joint ownership by shares.

A vote to dispose of the common part to be added by the owners, not the private part, so it is not necessary to obtain the consent of a certain owner, unless the added elevator occupies the private area of a certain owner. In the policy of elevator addition in various areas, it can be found that if the added elevator occupies the private part to be added by the owners, the consent of the said private part shall be obtained. For example, if the elevator shaft needs to occupy the private yard on the first floor, the consent of the first floor shall be obtained, and in this case, the first floor owner is equal to the veto power.

When the work of elevator addition was first started, in order to avoid contradictions at the source, local governments issued implementation plans of elevator addition basically giving the owners the veto power. However, as the work of elevator addition continues to go ahead, although the veto power has avoided disputes to some extent, its disadvantages are soon appearing. Based on the foregoing, in general, low-story owners have little or no need for elevators. But after they object to elevator addition, for high-story owners, especially those who have a greater need for elevators, their living environment and quality of life cannot be improved because of the decision to install elevators is rejected. Owners' needs for elevators are different, and the "veto power" enjoyed by owners makes the resolution to install elevators easily rejected, leading to installation of elevators, a project of people's livelihood, in trouble.

4. Be Careful in Using the "Veto Power" and Balancing the Interests of Multiple Parties

The installation of elevators in the existing houses should, in light of the laws and regulations of the planning and construction, focus on the detailed planning and construction, better coordinate the interests of all parties, smoothly implement the installation of elevators in the existing houses, and build a system design that gives consideration to the overall interests of owners and the legitimate rights and interests of individual owners. The "veto power" cannot objectively reflect the interests of the majority of owners, and should not be used as a way of voting on the installation of elevators in the existing houses. In the process of formulating relevant administrative laws, the governments should be cautious in using the "veto power", and should draw on the existing laws to balance the public interests, and enact the "higher-level law" in accordance with the Legislative Law of the People's Republic of China. Local governments should earnestly push ahead with the installation of elevators in the existing houses on the basis of "laws to abide by".

In response to the predicament of elevator installation caused by the "veto power", in recent years, the voting consent ratio has been changed in most areas, from the original one hundred percent voting ratio to "double two-thirds". There are regulations on the voting consent ratio of property owners for elevator installation in old residential areas in ten provincial capital cities (or centrally-administered municipalities) including Beijing, Shanghai, Guangzhou, Nanjing, Tianjin, Nanning, Nanchang,

Changsha, Lanzhou and Xining. Except that the <Implementation Plan of Elevator Installation for Existing Multi-Story Residential Buildings in Xining> implemented in 2017 provides that the conditions of elevator installation shall be met only with the consent of all the property owners and the absence of objections from interested parties, other cities require the voting consent ratio of “double two- thirds”. Beijing, Tianjin and Nanning and other cities require that other property owners shall not expressly object or shall obtain the consent of the property owners of the occupied exclusive areas; and Guangzhou, Shanghai and Nanjing adjust the voting rules in a timely manner according to the Civil Code.

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Notes

Note 1. Article 278 of the <Civil Code> The following matters shall be jointly decided by the owners: (1) Formulating or modifying the rules of procedure of the owners’ congress; (2) Formulating or modifying the management covenant; (3) Electing the owners’ committee or replacing the members of the owners’ committee; (4) Selecting or dismissing property service enterprises or other managers; (5) Using the maintenance funds for a building and the affiliated facilities thereof; (6) Raising maintenance funds for a building and the affiliated facilities thereof; (7) Renovating or reconstructing a building and the affiliated facilities thereof; (8) Changing the purpose of common parts or using common parts to carry out business activities; and (9) Other major matters relating to common rights and joint management rights. Any matter jointly decided by the owners shall be voted by the owners who account for more than 2/3 of the exclusive area and by more than 2/3 of the total number of the owners. A decision on any of the matters specified in Items 6 to 8 of the preceding Paragraph shall be subject to the approval by more than 3/4 of the owners who participate in the voting, and by more than 3/4 of the owners who participate in the voting. A decision on any other matter specified in the preceding Paragraph shall be subject to the approval by more than half of the owners who participate in the voting,

and by more than half of the owners who participate in the voting.

Note 2. Article 33 of the Constitution: All persons holding the nationality of the People's Republic of China are citizens of the People's Republic of China. All citizens of the People's Republic of China are equal before the law. The State respects and protects human rights. Every citizen enjoys the rights and at the same time must perform the duties prescribed by the Constitution and laws.

Note 3. Article 301 of the <Civil Code> Where a co-owned immovable or movable is disposed of, or a major repair is made to, or the nature or purpose of a co-owned immovable or movable is changed, the consent of the divided co-owners holding 2/3 shares or all joint co-owners shall be obtained, unless it is otherwise stipulated between the co-owners.

Note 4. Article 308 of the Civil Code: Where the joint owners make no agreement on whether the jointly owned immovable or movable is under joint ownership by shares or joint ownership, or such agreement is unclear, the joint ownership shall be regarded as joint ownership by shares unless there is a family relationship among the joint owners.