

Original Paper

The Problem of Installing Elevator in Old Residence and Its Solution

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Abstract

The installation of elevators in old residential areas is one of the important livelihood projects, and the voting rules for matters jointly decided by the owners have a significant impact on the process of the project. High-floor owners and low-floor owners often have difficulty reaching a consensus on elevator funding and compensation schemes. At present, in order to smoothly promote the installation of elevators, most regions have reduced the proportion of owners' voting consent to "double two-thirds", and the Civil Code has also modified the rules for the owners to jointly decide on matters. But new problems have arisen in protecting the interests of a small number of owners who oppose the installation of elevators. In the context of promoting the addition of new elevators to old residences, this article focuses on the protection of the rights and interests of the minority owners and tries to propose solutions which can coordinate the interests of the multiple parties. For example, if the resolution of adding new elevator has special impact on the proper exercise of the exclusive rights of the minority owners or infringes upon the legitimate rights of the minority owners, the special consent of such owners shall be obtained; legislations should respect and protect the remedies and compensation for losses of the legitimate rights and interests of the owners who object to the addition of new elevators, improve the revocation right of the owners and regulate the scheme of capital contribution and compensation, etc.

Keywords

additional elevator, one vote veto, old community, partitioned ownership of buildings, owners' voting rights

1. Introduction

"Add lifts" appeared in the Report on the Work of the Government of the State Council for three consecutive years, and the government promoted it as an important measure to perfect regional

development policies and promote the equalization of basic public services. But the old residential area with elevator work progress is still slow. Among the many reasons hindering the process of installing elevators, the most difficult problem is the interests coordination among the proprietors.

During the early implementation of the Real Right Law, pursuant to Article 76 of the Real Right Law, most cities set the property owners' voting proportion at "double two-thirds", i.e., the property owners with exclusive areas accounting for more than two-thirds of the total gross floor area of the buildings and more than two-thirds of the total number of property owners must be subject to the approval of the property owners. Article 278 of the Civil Code currently in force has adjusted the voting proportion for the matters jointly determined by property owners closely related to the addition of elevators to the theoretical "double majority decision", thus the revision of the rules on matters jointly determined by property owners has inevitably had an important impact on the voting matters concerning the addition of elevators. The revision in the Civil Code of the voting proportion for the matters jointly determined by the owners is conducive to the adoption of the resolution on adding lift; meanwhile, the owners who are in the minority dissenting have relatively lower voice in the resolution, giving rise to new problem of protection of the legitimate rights and interests of the owners who are in the minority dissenting.

2. Source of Conflict Arising from Adding the Lift

The unit price of a house on a lower floor in an old community is higher than that of a higher floor in the circumstance of no lift. Taking the Xuqing Apartment of Xudong Xuqing in Wuchang District, Wuhan City, Hubei Province as an example (Note 1), with the same construction area and decoration style, the house on the second floor costs RMB 27,000 per square meter while the house on the sixth floor costs RMB 24,000 per square meter. Both of them are old buildings without elevators about 80 square meters. Although the low floor has poor lighting and many mosquitoes, most of the residents in the old community are old people, so the price difference between the low floor and the high floor is about 240,000 yuan.

The author thinks that the root of the contradiction lies in the problem of elevator cost between the users of high and low floors and the compensation or not, and the amount of compensation. Residents of higher floors are often unwilling or only willing to pay a small amount of compensation to residents of lower floors, as can be seen from the many posts on this topic. When considering elevator construction schemes, users on higher floors often have various problems, such as unreasonable building planning (noise, impact on the natural lighting of residents on lower floors), unreasonable cost apportionment, and unreasonable compensation amount, etc., while seldom give the vital rights and interests of residents on lower floors a consideration. Reflected in the installation of elevators, that is, after the owners pass the resolution to install elevators through the democratic procedure of the minority is subordinate to the majority; their rights should also be respected and protected by a legal protection mechanism.

3. Solution of the Problem

In the legislative process, different individuals seek different legal rights protection according to their different interests, and various interest groups hold different legislative opinions with different value orientations. In the rule for owners' joint decision, the collective's choice and consensus reach the legislative result of reducing the difficulty of the rule for owners' joint decision. But the protection of minority rights should still receive attention and attention in the whole process of building the rule of law. Under the majority rule, the decisions made may be unfair to the minority.

3.1 The New Rule of "Double Majority Vote" Is Adopted and the Interested Owners Are Granted the "Veto Right" Simultaneously

If the resolution to install an elevator causes special impact on the proper exercise of exclusive rights by a minority of owners or infringes upon the legitimate rights of a minority of owners, it shall be specially agreed by such owners. Analysis from the perspective of comparative law in Japan, for example, Japanese law provides that in any case where changes to common parts affect the use of exclusive parts, the consent of the owners of the exclusive parts shall be obtained after the change is passed by a majority of more than 3/4 respectively of the owners of the building and the voting owners. It is thus clear that some countries have legislative experience in adopting the voting rules for matters jointly determined by the owners of condominium ownership of buildings, that is, the vote of all the affected owners plus the vote of the owners who own the specific area. Where a resolution to install an elevator may incur noise and affect the privacy problems to some owners, if the objecting owner can prove that his living environment and privacy rights are specially affected by the elevator, the owner shall enjoy a special right in the joint decision on elevator installation, which means the owner shall enjoy the "veto power".

Jurist Ronald Dworkin proposed "resource egalitarianism", which believes that the state should respect the differences between individual citizens as free and independent people, and respect their different choices for a good life, affirms the legitimacy of minority rights, and it is necessary to restrict and improve the system and rules of majority rule. Its minority rights jurisprudence theory is also of practical significance and value in the discussion of installing an elevator. The resolution to install an elevator is passed by a majority vote, but the owner who votes yes has no objective needs to install an elevator, the voice of the objectors should be given due attention. Where a property owner who votes to approve the addition of a lift has family members in good health condition without any elderly, children or other family members with travel inconvenience, and proposes to install the additional lift only for the purpose of increasing the value of the property, the said property owner shall understand that the opposing property owner is concerned about the invasion of his/her privacy by elevator installation or has concerns about the relative devaluation of the property and other reasonable appeals, and the opposing opinions of the minority shall be respected and protected.

3.2 Guarantee the Right of Revocation of Interested Owners

Article 3 of the Civil Code stipulates that the personal rights, property rights and other legitimate rights and interests of civil subjects shall be protected by the law and shall not be infringed upon by any

organization or individual. Article 280, Paragraph 2: Where the legitimate rights and interests of any owner are infringed upon by any decision made by the owners' general meeting or committee, the affected owner may request the people's court to revoke the decision.

As a categorized right commonly seen in the field of debt law, the right of revocation rarely appears in the Property Law. Considering the owners' voting rule in the Property Law of China is a typical democratic decision-making mechanism, in order to prevent the minority interests from being adversely affected by the democratic decision-making mechanism, a new type of right of revocation—"the owners' right of revocation" is created to remedy the owners whose rights are infringed due to the rule of majority rule. The owners can have the right to obtain relief by applying to the court for revoking the decision made by the owners' general meeting or committee. The importance and necessity of the owners' right of revocation mainly lie in the major issues of differentiation of building ownership in China, and the decision-making process of major issues is a typical democratic decision-making mechanism where the minority is subordinate to the majority.

If a resident of a lower floor believes that the resolution made by the owners' general meeting or the property committee on the installation of the elevator has infringed its certain specific rights and interests, such as right to privacy, pursuant to the rule of evidence, he/she shall prove to the court that his/her rights and interests have been infringed upon due to the installation of the elevator and request the people's court to revoke the decision. Article 12 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Specific Application of Law in the Trial of Cases of Disputes over Partitioned Ownership of Building Areas provides that: "Where an owner requests the people's court to revoke a decision made by the owners' general meeting or the owners' committee in accordance with Paragraph 2, Article 280 of the Civil Code on the ground that the owner has infringed upon his/her legitimate rights and interests or violated the legal procedures, he/she shall make the request within one year from the date when he/she knows or should have known the decision made by the owners' general meeting or the owners' committee." With a view to the implementation of the provisions of Paragraph 2, Article 280 of the Civil Code on the owners' right of revocation, this article is of great significance to the implementation of the owners' right of revocation. However, at the same time, there are ambiguities in the aspects of the subject and object of the right of revocation.

3.3 Regulating Plan on Cost of Adding Elevator and Compensation of Users on Lower Floors

In most areas, the detailed economic compensation for elevator installation depends on the owners to be negotiated about by them, and there is no unified standard or detailed rule in local areas. Mutual understanding and tolerance between owners who support elevator installation and owners who oppose elevator installation is the ideal state in elevator installation work, but at present, it is often difficult for users on lower floors and users on higher floors to reach an agreement on elevator installation and maintenance costs, installation compensation amounts, etc. Many neighbors have turned against each other. When majority rule becomes the mainstream practice in voting rules, it is easier to adopt the resolution on adding an elevator. For opponents who have reasonable claims, such as the owners whose

ventilation, lighting and privacy are affected, or the owners who suffer from noise pollution, when the majority of owners vote or wish to adopt the resolution on adding an elevator, giving economic compensation to the specially affected owners is one of the remedies to protect the rights of the minority owners.

At present, no city has established unified compensation rules or standards, which has its practical considerations and dilemmas. Due to the differences in economic development levels, lots, floors, building quality and other factors, it is difficult to uniformly regulate the compensation price or procedure, and it is difficult to ensure effective implementation. In addition, due to the particularity of distinguishing building ownership, the exclusive part and common part of the building are the real estate mixed together. The division of physical objects will reduce the value of common parts and owners' exclusive parts, and the ownership cannot be clarified from the perspective of building registration.

In the course of formulating the scheme of compensation to the owners of elevator installation, the local market price shall be taken as the criterion first, and the property rights of minority objectors shall be appraised out a market price based on the market value. The owners who support elevator installation shall compensate the other owners whose legal rights are affected by elevator installation, and the compensation disputes shall be settled. According to the principle of fairness, a resident who benefits from elevator installation shall use the benefits from the appreciation of the property value due to elevator installation to compensate the users on a lower floor for property loss caused by elevator installation such as noise and lighting. Meanwhile, for different floors, the method of differentiated sharing for elevator construction and maintenance costs shall be adopted to realize the substantive fairness. While the right of housing of residents on a higher floor is protected, the losses of users on a lower floor shall be compensated, so as to achieve a balance of interests.

4. Conclusion

With the aging of the population in China, a large number of multi-story houses in the existing old communities have no elevator. The elderly in the old communities have a lot of inconvenience when they get around. Installing elevators in multi-story houses has become an urgent social problem to be solved. The rules for the resolution of elevator installation reflect the trend that it is easier to pass the resolution to install elevators, but this trend also means that the rights and demands of a small number of owners are being ignored. Although this trend is conducive to promoting the process of installing elevators, it will also create many new problems in protecting the interests of the minority objectors. The rights claims of the minority should be paid attention to and taken seriously in the process of the construction of the rule of law. In the process of elevator installation, the owners make decisions in accordance with the majority rule democratic procedure. After the resolution to install elevators is adopted, the rights of the minority objector owners should also be respected and protected. In addition, although the operability of the owner's right of cancellation needs to be further improved, it can still be

considered from the perspective of improving the owner's right of cancellation. Finally, the treatment of objector owners, especially those represented by the owners on lower floors, should be accompanied by standard compensation rules. Although our country has not yet promulgated the relevant compensation provisions, there are related documents to guide and reference investment ratio, which is conducive to establishing a unified compensation standard, promoting the implementation of elevator installation, and reducing the difficulty of elevator installation.

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Note

Note 1. Real-time data from the Chain Home app as of 5/21/2022