

Legal Problems of Shenzhen Xiaochanquan Properties

Description

This type of real properties termed as “Xiaochanquan” or “small titled properties” or “small property rights” (“**SPR**”) in Shenzhen is very special, compared to similar-named properties in other rural parts of China.



Small Property Rights Housing in Shenzhen

I. Small Property Rights or Small Titled Properties

Xiaochanquan or literally translated as “small property rights” generally refers to real properties built on [rural collective-owned land \(as opposite to land owned by the state\)](#) which are much restricted in various aspects, such as not legally available to urban residents, and very often the title deeds of such properties are issued by local township or villages not by officially mandated real estate registration authority, thus a “weaker” and smaller type of property in contrast to apartments built on urban land.

But what makes Shenzhen small property rights special is that those so-called Xiaochanquan properties are actually standing all on urban lands, because Shenzhen government announced the total conversion of all rural lands into urban lands back in 1980s. In other words, those SPR properties are no longer small property rights in its strict sense due to the change of nature of underneath lands.

However, because of the historical problem in converting rural lands into urban lands, Shenzhen local government has been maintaining restrictions on the sale and purchase of such SPR properties. The main defect of purchasing SPR properties is that the buyer won't be able to get a legal title deed, thus cannot prove his or her ownership easily as urban properties. The lack of legal title deed means that owners cannot create mortgage over the property in exchange for bank loans, thus buyers shall have to pay full price in cash to buy such SPR properties. The local government has even prohibited real estate agents, esp the big ones, from listing and bridging such deals, making such properties less attractive to investors in terms of liquidity.

Despite executive orders and regulations by local governments, local courts in Shenzhen have

however changed its judicial stance towards SPR properties in light of

On the other hand, SPR properties account for almost half of the housing in Shenzhen local property market, and despite the government restrictions and risks in nature, sale and purchase of these “small titled properties” has never been effectively choked, and indeed, SPR property market is increasingly attractive to buyers who cannot afford sky-high priced normal urban properties.

II. Legality and Problems of SPR Property Transactions

In the meantime, due to the change of nature of lands beneath SPR properties in Shenzhen, local courts in Shenzhen have over time shifted their negative attitude towards transactions of SPR properties. Today, ***in light of the different historical treatments of such SPR properties*** (it should be born in mind that not all SPR properties in Shenzhen have been duly dealt with and white-listed) so long as the illegalities concerning the SPR property in regard of construction zoning regulation has been rectified, the contract for selling such SPR is now been recognized as valid, because the parties to the contract were both sincere and voluntarily executed the contract, and didn't violate any national laws or central government regulations (in other words, violation of local regulation doesn't invalidate the contract as a matter of China Legislation Law). The shift of judicial stance has offered a lot of comfort to buyers of SPR properties *for the original sellers are bound by the valid contract and no longer able to take back such properties after years of price increase brought about by local hot property markets.*

Now, it shall be noted that the judicial attitude of validating the contracts for sale and purchase of SPR properties doesn't mean there is no more risks related to such deals. Contract itself is valid, but still there will be no official valid title deed issued for such properties, and all other restrictions are still applicable to the successor owners.

In practice, a wary buyer will insist on seeing all prior transaction documents to prove the chain of transaction documents all the way up to original owner (who is supposed to be the local villager), in order to ensure that no surprise will pop up after closing the deal.

After all, the local courts' stance on SPR property deals has surely stimulated SPR property transactions. In practice, as mentioned above, buyers shall be very careful and prudent in choosing the right SPR properties to buy and invest.

Just recently, we came across an inheritance matter where the deceased bought dozens of such SPR properties, and it has been a big headache to work out such inheritance when it is difficult to prove the deceased has bought these properties. Further since the deceased was not original villager owner, local notary offices in Shenzhen refused to issue [inheritance right notarisation document](#) to confirm clients' entitlement to the estates. A court action is necessary.

III. Investment Opportunities?

The current legal problems and situation surrounding SPR properties in Shenzhen have actually created a good opportunity for real estate investment whereby the investors can achieve a return (which can easily be more than 5% per annum) higher than banking interest rate. The reason is simple: *the purchase price of such SPR properties is generally one third of the normal urban apartments in the same area, but the rental of SPR properties is not much less than that of the normal urban properties in the same area*

People who are looking for stable rental income at a lower cost in today's property market should not miss the opportunities offered by such SPR properties in Shenzhen.

One of the best advantages of such SPR properties is that it can be bought by anyone who can afford it. After all, purchases of normal urban apartments are limited to those residents in Shenzhen who have worked there and contributed in social insurance premiums for three years. At the time of this post, Shenzhen local government has relaxed its restriction rules but not really lifted totally.

It is well known in Shenzhen that many Hong Kong people are investing in such SPR properties because of high investment return and the geographical adjacency to Shenzhen city.

Of course, the fact that there is no official title deed for SPR properties is a bit bothering and troublesome to many, esp in that it makes it difficult for owners to hypothecate such properties for bank loans, thus less liquid assets. Personally, I believe it is more advisable for investors to incorporate a company to hold those SPR properties, while this may lead to levy of corporate income tax on rental income, it will surely help the company to obtain banking facilities in the form of enterprise business loans, and it will also help to avoid the difficult inheritance situation as described above because the interests in the SPR properties are now held and owned by the company, not individuals.

If you are interested to know more about small property rights or small titled properties in Shenzhen, and wish to tap the investment opportunities, then contact us for more.

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