

pre-registration in property sale/purchase in China — a tip for property buyers

Description

The word “pre-registration” may be very confusing if not misleading for people who don’t know Chinese property law, as the word itself does not laterally match the real meaning it was meant to mean here.

The pre-registration system in Chinese property market had been in place for long before it was formally introduced and expanded in its application in China Property Law which only took effect in 2007. Article 20 of China Property Law says to the effect that the parties to the contract concerning immovable property rights such as property sale, may, for purpose of ensuring his realization of property rights thereunder, apply to registration authority for registration of the deal that is yet to be completed later in accordance with their agreement in the contract; after the pre-registration is done, without the consent of the pre-registered right holder, disposal of the immovable property shall not have its desired legal effect.

To illustrate it with an example, pre-registration used to be used in sale of new homes. Generally, after execution of sale contract for property under construction by developer and buyer, such contract shall be registered with real estate authority before the sale contract can be performed, namely, the completion of the construction of the property. In this way, the home buyers will be protected from the property developer selling the same property to others.

Later in the enacted China Property Law, the pre-registration system is expanded in its application to second-hand property sale and other type of deals involving property rights such as hypothec. In other words, when you buy an apartment or house in China from other owners than developers, you can also add a clause in your sale and purchase contract empowering yourself to do the pre-registration on your own.

The pre-registration rule helps to protect the buyer of property by restricting the seller from disposing of the same property without the knowledge of the buyer before completion of the sale or purchase of the property.

A case we have done recently showed exactly how the pre-registration can help property buyers. In the case our client, the buyer, failed to obtain bank financing in time which made him default in making payment to the seller. The seller sued the client claiming damages resulted from breach of contract by our client and it seemed to us initially that our client would have to pay some money to compensate the seller. Upon careful review of the sale and purchase contract, we found that there was a pre-registration clause in the contract. Knowing that the seller was in process of negotiating with another buyer to sell the property, we immediately went to real estate registration authority to get the sale contract pre-registered. In the course of the court proceeding against our client, the seller realized that the property in dispute was being restricted from being sold to others because of the pre-registration. In practice, the seller could not remove or cancel the pre-registration without the consent of our client. The seller was in a dilemma situation now because he had entered into an agreement with a third party under which he would be subject to heavy penalty also if he could not sell the property to the said third party in time. he had to weigh his options before him now. We made it clear to him that we would

cooperate to deregister the pre-registration if he exempted our client's liability for failing to make payment in time. In the end, the seller after good calculation agreed to release our client from any breach liability under the mentioned sale contract which turned out to be a total victory by our client.

Given that the pre-registration favors the buyer in property deals, property sellers shall be cautious when the deal contract bears a pre-registration clause (actually, pre-registration clause is a standard one in the model contract issued by Shanghai authorities) as it affects sellers' ability to dispose of their properties even if the buyer seems to be unable to complete the deal. There should be counter clause addressing the problem which will save the sellers from being treated unfairly.



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