Allocated land use right issue in purchasing properties in French Concession Area in Shanghai

Description

This is actually a summary written to one of my clients who is selling his house in the French Concession Area in Shanghai. One of his prospective buyers raised a good question regarding the land use right after reviewing the title deed of the house. Unlike other new apartments, my client's title deed of his house does not specify a 70 year period of land use right, which puzzled the foreign buyer.

Therefore, client came to me for help to explain the legal issue to the prospective buyer.

Here we go.

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Dear Both:

To follow up our visit to Xuhui Real Estate Transaction Centre, I would like to prepare this summary of regulations for your and the prospective client's knowledge and reference.

Our question is that whether or not the buyer will in the end obtain a title deed with a definite period of 70 years on it. However I will go beyond the question a bit below.

Present Facts: in your title deed, it indicates that the land use right is allocated (for free) other than granted for land premium; there is no definite period of 70 years; your house was built in the year of 1940.

Answer from the official at the Inquiry Window at Xuhui Real Estate Transaction Centre to the above question is: there won't be 70 year period appearing on the title deed following the completion of the sale; on the other hand, the type of land use right will be recorded as "granted" with a remark of "regroup" in the remark page of the deed book.

As it is a historic property, there are a slew of pieces of regulations that are relevant to the issue. I would just single out a few and make it short and brief as follows:

1. "Allocated" land use right refers to the use of land made available to the user for free and without an express time limit on the use. This contrasts hugely with the "granted" land use right obtained through public bidding process or by agreement under which there must be a certain amount of land grant premium/fee and term of use attached thereto.

2. Despite the enactment of "??????????????", effective from January 1 of 1995 (amended in 2007) which provides that land grant fee shall be collected if the property located on the allocated land is transferred[JT1] , so far Shanghai has not followed this rule at large.

3. However in 2010, Shanghai government issued a notice "????????????????????????????"

(exhibited hereto) to the effect that upon transfer of garden villa and non-residential properties, the buyer shall enter into a land grant contract with local land bureau and pay the land grant fee.

It is therefore inferred that residential properties other than garden villas on allocated land will not be subject to payment of land grant fee at the time of their transfer.

Your house is not a “garden villa” but a “new lane house (????)”, so your buyer will not be required to pay a land grant fee.

Thus, upon the transfer of your house to your buyer, the land use right will remain the same as it is now. That is why the official said that it will still be allocated land without any specific term in the new title deed.

4. As for the “regroup” remark, it is based on another notice “??????????????????????????????” (exhibited hereto) issued by Shanghai Municipal Real Estate Bureau in 2007. It is provided in this notice that in the case of the registration of properties on allocated land, the type of land use right shall be recorded as “granted” but without specifying the term of use. For purpose of distinguishing this type of “granted” land use right from the normal granted land use right, the notice required a remark of “regroup (??)” to be indicated in the remark page of the title deed.

Here “regroup (??)” basically means unifying various kinds (due to unclear guidelines from superior authority) of registration into one uniform registration, as indicated in this 2007 notice.

This explained what the official at Xuhui Real Estate Transaction Centre said.

5. It is also worth a note that your house is located in one of the so-called “historic and cultural areas” in Shanghai.

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For more, http://www.andyhousesh.com/NewMessage/NewDetail.aspx?ID=463.

From the promulgation of the regulation “??????????????????????” (exhibited hereto) in 2003, as amended in 2010, Shanghai has designated dozens of such areas and accordingly given special protection to such areas to preserve the unique identity of Shanghai city.

According to this regulation, such old properties are not allowed to be destroyed and shall be maintained in its historic structure and taste.

This means that properties in these areas are supposed to sit there for ever without worrying about being demolished in the future.

6. Taking the paragraphs in Section 5 above into account, we will find a great advantage of buying your house in contract with purchasing normal property in other non-protective areas. Namely, the owners of such properties won’t worry about government requesting them to pay new fee upon the expiry of 70 years.

Though it is not clear about what Chinese governments will do upon expiry of 70 years for residential properties, one cannot confidently rule out a possible fee or new taxes to be levied so that governments will be able to continue collecting money from land users.

Since the land underpinning your house is allocated and the house will not be demolished or torn down in the future, theoretically, the owner can just enjoy the property for good without the worry of being requested to pay money which will surely loom large one day for owners of ordinary properties.

In sum, any buyer won't have to worry about the land use right. On the other hand, it is rather a great benefit for keeping the land as is now.

Should you and your buyer have any other questions, please don't hesitate to let me know.
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