

SUMMARY OF THE DOCTORAL DISSERTATION

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Dissertation title:

Liability of a developer for physical defects of a dwelling on the basis of the Development Act

The expansion of the developer activity in Poland began in the mid-nineties. Since then, the number of dwellings constructed by developers has been growing systematically, increasing its share in the total number of dwellings completed. The breakthrough moment was the entry into force of the Act of 16 September 2011 on the Protection of Rights of Buyers of Residential Units or Single-Family Houses, commonly referred to as the "Act on Developers". However, the regulation treats the issue of liability for physical defects in a fragmentary manner, which causes that in many issues it remains unsettled.

The subject of the dissertation is an attempt to assess the effectiveness and efficiency of the solutions concerning the developer's liability for defects of the residential unit provided in the Act. The objective of the thesis was to determine whether these solutions are sufficient to protect the purchaser and to achieve the assumed social objectives of the Act. The analysis of the research problem is based on the concept of dualism of equal main performances on the part of the developer. The theory consists in the fact that these performances are functionally connected with each other in such a way that the fulfilment of the first of them (i.e. construction of the building) makes possible the fulfilment of the second of them, i.e. transfer of the ownership of the separated real estate to the purchaser. This assumption enables gradation of the assessment of the correctness of performance of the service offered to the purchaser by the developer. Consequently, it was necessary to discuss the issue of liability for physical defects of the residential unit at many levels, basing not only on the rules of the Development Act, but also of the Civil Code. The considerations were conducted in two periods: at the stage of accepting the apartment and in the period between its delivery to the buyer and signing by the parties of the agreement transferring the ownership of the real estate. The determinant of this division was the separation of the key actions in the course of realization of the developer contract.

The discussion of the rules of a developer's liability for physical defects of a residential unit is limited to relations with consumers. Consumers are considered to be weaker entities, which results from the economic and factual circumstances accompanying the conclusion of a

developer agreement. So far, the lack of systematization of issues related to the liability for physical defects of residential premises caused that some rules of functioning of this liability were not understandable. As a result, the dissertation undoubtedly has a practical character. Taking up the topic also results from the lack of monographic study devoted to this subject, which fills the gap in this area. The analysis of the issue is based not only on the achievements of the Polish science of law, but it also presents solutions to the research problem in other, selected European countries, which significantly complements the achievements of the Polish literature. The conclusions formulated in this dissertation are also the result of the author's own experience gathered in the course of several years of work on real estate development projects and of her interest in the issue of liability for defects, due to her construction education.

The innovation of the topic undertaken in the dissertation is demonstrated first of all in the problems described in it, which have so far been omitted in the legal literature or described only briefly. One of them, being a key issue discussed in the dissertation, is distinguishing the criteria of assessing the conformity of the completed object of performance with the contract. Settlement of this issue has undoubtedly a practical meaning, because it is often the reason of disputes between contractual parties. An attempt to answer the question, what criteria determine that a thing is affected by a physical defect is of non-trivial importance for further consequences of such assessment. However, it is not easy to establish uniform criteria for such assessment. It is influenced by the construction character of the object of performance under the developer agreement. As a result, when assessing the qualification of defectiveness of the dwelling, such notions as: the rules of construction knowledge, technical standards, construction design will be important. However, the technical aspect is often wrongly omitted when discussing the issues related to the liability for physical defects.

The dissertation consists of an introduction, six chapters, which have been divided into smaller editorial units as required, and a summary.

The first chapter is an introduction to the subject of the developer's liability for physical defects of the residential premises. It presents the concept of civil liability and discusses the essence and character of the developer agreement as well as its subjective and objective scope. The social role of the developer contract in the system of economic turnover is also highlighted. The chapter also briefly discusses the genesis of the institution of liability for defects in Poland.

The second chapter is devoted to comparative legal analysis. It discusses the solutions of the developer's liability for physical defects of the dwelling that exist in the following countries: Germany, Austria, France and Belgium.

The third chapter is an extensive discussion of the concept of physical defect, which is crucial for the topic of this dissertation, as well as criteria for assessing the quality of a dwelling. It also discusses the relation of a physical defect to the performance of a thing other than the

agreed one. This is because the doctrine lacks extensive argumentation and reference to the issue of aliud in the context of things marked as to identity. The chapter also explains the relation of the physical defect to the notion of quality of the dwelling. Furthermore, the influence of technical criteria on the assessment of quality is discussed, which include compliance with the construction design, technical norms and principles of technical knowledge. An attempt was also made to assess esthetic aspects and to answer the question of the limit exceeding which this type of deficiency may be considered a physical defect.

The fourth chapter is devoted to the issue of the developer's liability for physical defects revealed during the acceptance of the residential unit. It discusses the importance of the acceptance of the dwelling unit and analyses the rules of liability for defects provided in the Development Act. The chapter also contains considerations regarding the possibility of the purchaser's refusal to accept the residential unit due to the occurrence of physical defects and an analysis of the possibility of claiming an error as to the purchaser's knowledge of the properties of the residential unit. Another important issue discussed in this chapter is the assessment of the possibility to exclude the developer's liability for physical defects in the course of the acceptance of the residential unit.

The fifth chapter contains a discussion of the rules of liability for physical defects based on the Civil Code provisions on warranty. The analysis of this issue is preceded by a discussion of the nature of warranty and its function in civil law relations. The chapter also discusses the possibility of applying warranty provisions to physical defects discovered during the acceptance of a dwelling. In the further part, an attempt was made to answer the question about legal basis of liability for defects revealed after delivery of an apartment. It also presents the limits of the developer's liability for defects and discusses the rights the buyer is entitled to under the warranty. The chapter ends with a discussion of the influence of the ownership transfer agreement on the liability for physical defects of the developer under the warranty system.

The sixth chapter is devoted to mutual relations between the institution of warranty and other mechanisms of liability for physical defects in civil law. The considerations include the analysis of the institution of guarantee, contractual liability on general principles, liability for a dangerous product and contractual penalty. The clarification of these relations is intended to complement the considerations on the developer's liability for physical defects of the dwelling.

The last part of the dissertation is the summary, which has been divided into three parts. The first part is an assessment of the planned directions of the amendment of the Act on developer's in the scope of liability for physical defects of an apartment. The next part consists of final conclusions and postulates *de lege ferenda*.