How to Manage Our Apartments?

written by Samir Aliyev

In my last post titled *The Arbitrariness of Housing Cooperatives on Unprotected Private Property*, I touched on how Housing Cooperatives (HCs) commit illegalities in housing management, tire their residents with bureaucracy, and abuse the temporary right accorded to them by legislation. In the discussions surrounding the article, the most frequent questions asked by readers came down to this: if Housing Maintenance Offices (HMOs) provide illegal services and HCs have limited terms of office, who then is to manage the buildings? The discussions indicated that readers are more concerned with finding an exit, namely what an exemplary housing management should look like. In this regard, I decided to dedicate this article to potential new mechanisms of managing our apartments.

Let me first note that the issue of housing management has nothing to do with lack of an appropriate legal framework, but rather relates to the government's failure to make a political decision. Because if we were to analyze it, we would find that there is a legislative framework adapted to international practices, but not an advanced one, of course. Enacted in 2009, *the Housing Code of the Republic of Azerbaijan* is the national legal framework of housing management. In addition to the Constitution, the Code is the main law in the field of housing management. This means that all other normative documents, including laws, must be adapted to the requirements of this Code. *The Housing Code of the Azerbaijan SSR,* which was a product of the Soviet management system and entered into force in 1982, has no longer been in force since 2009. However, the principles of the old Code, including its management mechanism in the form of the Housing Maintenance Offices (HMOs), are still active. Moreover, the illicit services provided by these HMOs to the population are described in the article titled *On Illegal Authority of*

Departments of Housing and Communal Services. Today, housing management is carried out in the country via principles born of both existing and expired codes. In accordance with the requirements of the old code, HMOs provide service to buildings erected in Soviet and pre-Soviet times. The multi-apartment buildings erected during the years of independence and dubbed colloquially "newly built constructions," are managed by Housing Cooperatives in accordance with the new Code. Both mechanisms have been applied against the will of apartment owners. The third paragraph of article 29 of the Constitution of the Republic of Azerbaijan states that the right to property includes the right to possess, use and dispose of property individually or jointly with others. Although a citizen can possess property in Azerbaijan, he/she in practice has limited access to use and dispose of it. Apartment owners in practice do not decide issues from determining the amount of the housing fees to the disposal of the land plot where the apartment is located, but rather third-party institutions – HMOs and HCs – decide these issues.

According to the existing Housing Code, housing management mechanisms differ according to the type of housing property. The state housing fund is managed by relevant state institutions, while the municipal housing fund by municipalities. Separately, I should mention that HMOs subordinated to the regional and city executive authorities have the right to manage only the state-owned housing fund. Managing the housing fund, which is another property, constitutes an illegitimate and unacceptable interference. Data from the State Statistics Committee shows that in 2021, the state accounted for 4,7% (9,4 million sq.m.) of the country's overall housing stock.

The municipal housing stock should be managed by municipalities. However, despite the right conferred by legislation, the municipal housing stock has not been formed yet. This is because of the limited power and financial capabilities of local self-government institutions.

According to the State Statistics Committee, in 2021, private ownership accounted for 95,3% (191,3 million sq.m.) of the country's overal housing stock, of which 93% (177,9 million sq.m.) is private property owned by the population. Putting aside the last two years that spanned the pandemic outbreak, 4-5 thousand apartments are privatized every year on average. The number of privately-owned apartments is increasing, yet the issue of their management still remains open. Current legislation draws a red line regarding the management of the private housing stock: private housing stock must be managed by the decision of its owner.

What are the management methods?

The Housing Code envisages 3 methods of managing a multi-apartment building and the property owners of the apartment building are obliged to choose one of the following methods of management of the building:

1. Direct management of the building by the owners.

In this method, the property owners of a multi-apartment building enter into contracts with the persons performing the relevant types of activities on the provision of services for the maintenance of the common property of the building and the performance of repair works. Those property owners who directly manage the multi-apartment building conclude contracts for power, gas and water supply, as well as sewerage and heat supply in their own name.

2. Management via a joint venture of apartment owners or a specialized consumer cooperative.

Residents of the building can come together to create a joint society of apartment owners (JSAO). The joint society is a voluntary association of multi-apartment building owners. This institution is a non-profit legal entity, and its main purpose is distributing services to its participants (members).

A general assembly of the apartment building must be held to create the JSAO and the decision is made by a simple majority vote. For this, more than 50% of the property owners must participate in the process. That is, if 100 owners live in the building, in this case, 51 owners (50% + 1 owner) must be present at the assembly to establish the JSAO.

The management bodies of the JSAO consist of a general assembly of members, a board of directors and a financial audit commission (auditor). As in other public organizations, the supreme governing body is the general assembly. The General Assembly elects the Board of Directors and the Audit Commission for a period of two years.

3. Management by a governing body.

If the owners of the apartment building do not want to be closely involved in the management of the building, they can entrust the management to a specialized organization. Several managing firms already operate in Baku (for example, IPE Group). An apartment building can be managed by only one managing organization.

All the three management methods specified by law have advantages and disadvantages. The method *of direct management of the building by the owners* is effective for the management of non-multi-apartment buildings, i.e., 1 or 2-storey buildings. The main advantage of *specialized organizations* is their professionalism. Unlike joint societies of apartment owners, specialized organizations can manage several buildings at the same time. The main disadvantage of managing bodies is the possibility of higher service fees. Among these methods, the most optimal is the creation of joint societies of apartment owners. All over the world, this form of management is called *condominium* (lat. *con* (joint) + *dominium* (ownership)). In the 2019 edition of Guidelines on the Management and Ownership of Condominium Housing prepared by the United Nations Economic Commission for Europe (UNECE), the

concept of “condominium” is defined as a form of shared ownership of common elements of buildings in multi-apartment buildings. Each of those who live in the multi-apartment building act as a private owner of their apartment, and as a joint owner of the common areas of the building that serve that apartment. An analogue of condominiums in Russia is the *homeowners’ partnership* (товарищество спеценников жилья), and in Kazakhstan, the association of property owners.

The main advantage of the JSAOs is that apartment owners are directly involved in management. Compared to managing bodies, their housing fees are relatively cheap. Other advantages of these institutions are that they allow opportunities to control the use of the collected funds, that their apartment owners are responsible not only for their own property, but also for the common property, and that they fall under a preferential tax regime [tax concessions are applied to such associations in a number of countries]. Most importantly, the building of the joint society serves as a workplace and can therefore generate jobs for the economy. Each JSOA employs at least 3-4 people. According to official information, privately owned residential buildings across the country number about 1,5 million. Unfortunately, there is no official information about what share of these residential buildings are multi-apartment buildings. There are, according to the press, about 11.000 multi-apartment residential buildings on the balance sheet of the Baku City Executive Authority’s Department of Housing and Communal Services alone. Independent real estate experts claim that there are 30.000-35.000 multi-apartment buildings across the country. In turn, the Ministry of Economy says it supported the efforts to create joint societies of apartment owners. The current amount of such societies totalled 245 as of July 1, 2022. These joint societies currently serve 396 buildings and 45.820 apartments, 10 of which are located in Absheron, 1 in Sheki, 1 in Ganja, 3 in Sumgayit, and the rest in Baku. Therefore, the number of JSAO can be increased at least 100 times. This shows a

potential to generate an additional 120.000-150.000 jobs.

Depending on which method the building owners choose, it is very important to note one point. The management method of the multi-apartment building is chosen at a general assembly of the property owners of the building and can be chosen or changed at any time based on the assembly's decision. The decision of the general assembly on the selection of the management method is binding for all owners of the building until overturned by another assembly decision.

What is the role of municipalities?

The role of the municipality in the management of multi-apartment buildings located in its territory is mainly limited to organizational support. A local self-governing municipality mostly controls the timely establishment of a building's management mechanism. Thus, unless the owners of a multi-apartment building decide on a management method for the building by themselves within six months, or a decision on this matter is implemented, the municipality must convene a meeting of the property owners for the purpose of choosing a management method for the building. Unless a management method for a multi-apartment building is chosen within a year, or the decision is implemented, the municipality must hold an open competition for the selection of a managing body. An open competition is held in accordance with the Rules of holding an open competition for the selection of a managing body for a multi-apartment building adopted in 2010 by the Cabinet of Ministers. The municipality shall inform all property owners of a multi-apartment building about the results of the open competition and the conditions of the management contract of the building *within ten days* after its announcement. The owners of the multi-apartment building are obliged to conclude an agreement on the management of that building with the managing body selected through the open competition.

Municipalities can also provide technical and financial

support. They provide equal opportunities for the activities of managing organizations, as well as help increase the qualifications of managing personnel. In addition, municipalities can help with capital repairs of multi-apartment buildings at their own expense.

Why has the implementation of the code been delayed?

Thirteen years have passed since the adoption of the Housing Code. However, the mechanisms for private property management, which are important requirements of the Code, have still not been implemented. However, the necessary prerequisites exist. In addition to the Code, other necessary regulatory and legal acts for the management of multi-apartment buildings have already entered into force. Fines for violating housing law have also been imposed. Article 393-1 of the Code on Administrative Offenses provides for fines for violating the housing legislation. According to the code, if the municipality fails to take necessary measures to solve issues of management methods of multi-apartment buildings, the officials shall be fined an amount of *300 to 500 manats*. Officials shall be fined *300 to 800 manats* and legal entities *1.000 to 2.000 manats* for obstructing the selection of a building's management method. If a housing cooperative is not *dissolved within one month as provided by law*, or a decision to transform it into a joint society of apartment owners is not implemented, then officials shall be fined *2.000 manats*, and legal entities at amount of *5,000 manats*.

Ideally, by now we should have seen concrete steps towards the end of HMOs and HCs. The necessary legal framework has been created, fines have been determined for those who obstruct the application of the Housing Code, and there are institutions now responsible for the implementation of housing legislation. But the process is frozen. The penalty system has been established in legislation, yet it is not applied in practice. One of the two bodies responsible for implementing housing law has already been removed from the process. In 2014 the

Ministry of the Economy was entrusted to carry out the functions of the central executive authority that implements state policy and regulation in the areas of housing and communal services, but in 2019, these powers were removed from that body. At present, only local executive authorities implement state policy. According to the Regulation on Local Executive Authorities, executive authorities ensure the implementation of state policy in the field of housing and communal services in the relevant area, organize the management of housing and maintenance areas, and organize the maintenance and management of residential and non-residential areas of the state housing fund. However, these institutions do not follow the law, and instead are only interested in continuing the now illegal work of HMOs and HCs.

The reason for this is simple: the central government is in no hurry to make a political decision on the issue because the new mechanism may reduce the government's control over housing management. The indispensable role of HMOs in elections is the main factor that has preserved their existence until now. With minor exceptions, the population is not interested either in the illegality of HMOs and HCs. The main reason here is, of course, their ignorance of their rights according to the Housing Code. Another reason is related to residents' satisfaction with the low housing fees collected by HMOs, avoiding the high housing fees applied by HCs. It is therefore no coincidence that the number of joint societies of apartment owners created so far does not constitute even 1% of potential participants.