

Balance of Interests and Dispute Resolution in the Retrofitting of Elevators in Existing Multi-Story Houses in Tianjin

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Abstract

With the aging of China's population, the retrofitting of elevators in existing multi-story residential buildings has been steadily promoted with the support of the government, but the regulations and policies guiding the retrofitting of elevators have not been able to solve the disputes related to compensation relief, cost sharing, and safeguard measures well. The existing types of disputes are mainly civil and administrative. After searching and analyzing, civil disputes can be divided into three categories: nuisance removal, economic loss, and procedural defects, and in practice, there are problems with different standards for judging the eligibility of litigation subjects, limitations of litigation by low-rise owners, and lack of compensation mechanisms. Based on the current situation of retrofitting elevators to existing multi-story residential buildings in Tianjin, this paper analyzes the existing dispute resolution paths from the balance of interests of relevant subjects to promote the implementation of retrofitting elevators to existing multi-story residential buildings.

Keywords: adding elevator, Civil Code, dispute resolution

1. Introduction

1.1 Problem Formulation

The results of the seventh national census of China show that the number of elderly people is increasing, and the population of elderly people aged 60 and above in Tianjin has reached 3 million, and the population of elderly people aged 65 and above has reached 2.04 million, accounting for 21.66% and 14.75% of the total population respectively, exceeding the national average and entering a moderately aging society ahead of schedule. In terms of housing, elderly

people living in high-rise buildings have difficulties getting around due to their poor legs. Retrofitting these old buildings with elevators is a powerful measure to promote the construction of aging communities and help alleviate this problem. The existing procedures for adding elevators to multi-story residential buildings across China mainly refer to local guiding documents, the operability of relevant policies is limited, and dispute resolution measures are mostly based on negotiation and mediation. Attempts to solve this problem can summarize the disputes and problems encountered in

practice, and further study and improve the mediation compensation mechanism in terms of dispute mediation. And introduce a new voting ratio in the General Principles of Civil Law, refine the procedural design of the existing residential retrofitting elevator dispute resolution, and seek a balance of interests. By collecting cases of interest compensation and dispute settlement from all over the country, we focus on the balance of interests of relevant subjects and explore suitable cost-sharing schemes, which are conducive to promoting an aging-friendly living environment and livelihood construction.

1.2 Exploring the Importance of the Balance of Interests

The Chinese government has emphasized the issue of retrofitting elevators in the “Government Work Report” for many years in a row, providing policy support to further implement the retrofitting of elevators in existing multi-story residential buildings. In practice, due to the cumbersome approval procedures, lack of mechanism and system, and an unbalanced distribution of interests, there is no uniform standard for the compensation mechanism for damage to the interests of affected low-floor owners, and the balance of interests among owners has become the biggest obstacle to promoting the installation of elevators. From the perspective of laws and regulations, the addition of elevators to existing multi-story residential buildings is an act of disposition of the owners’ common parts, which should be voted on by the owners together. Chinese law in the multi-story residential installation of elevators on the issue of the pursuit of efficient decision-making, the Civil Code of the owners’ meeting of common matters decided to lower the voting threshold compared to the old “Property Law”, when the vote to participate in the vote and support the rate of votes to reach a “double majority” decision to pass the issue. At the same time, the minority of opposing owners have relatively less say in the resolution, resulting in a new problem of

protection of the legitimate rights and interests of the minority of opposing owners. In the study of disputes over the retrofitting of elevators in existing multi-story houses, we try to improve and refine the existing dispute resolution path by improving the procedural design of grassroots mediation and compensation mechanisms, and further weighing the interests of all parties.

1.3 Current Status of Research in China

The work of retrofitting elevators in existing multi-story residential buildings involves multi-level government departments, owners, and relevant market enterprises. Due to many interested parties and different demands, the policy has encountered obstacles many times since its implementation (Ma, 2021). Owners adopt the double majority rule of adoption for voting, and the scope of owners’ voting rights should be determined according to the attributes of the public parts occupied by the additional elevators (Chen et al, 2018). At the same time, some scholars believe that if this practice of satisfying the interests of the majority at the expense of the minority is proliferated in local legislation or administrative policies, it will have an impact on the original social harmony relationship (Xiao,2021). In response to this problem, some scholars point out that the protection of the legitimate rights and interests of specific owners can be protected by improving the exercise of the owner’s right to revoke (Liu,2020).

2. Judicial Status of Elevator Retrofitting Matters

2.1 Main Types of Disputes

The existing multi-story residential retrofitting elevator is the owner of the civil act of funding the purchase and retrofitting elevator after the vote of consultation, and the need to apply to the administrative approval department for planning permission and other procedures involving administrative acts, the main dispute for the current civil disputes and administrative disputes.

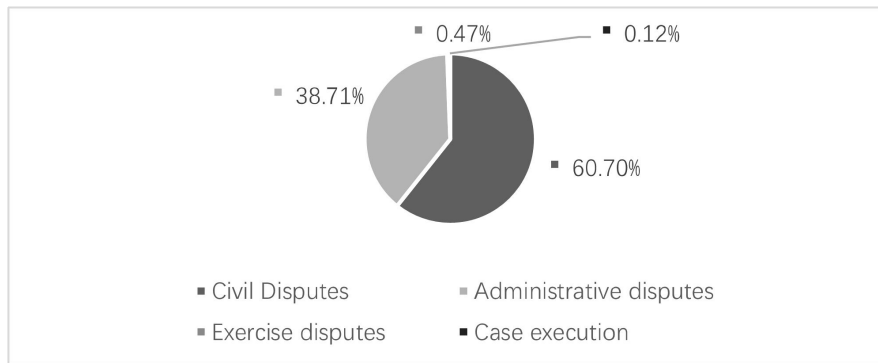


Figure 1. Major types of disputes in China

2.1.1 Civil Disputes

Most of the civil disputes over property rights in the retrofitting of elevators in existing multi-story residential buildings in China occurred among residential owners, and the verdicts were concentrated on two types of cases, namely, nuisance removal disputes and neighboring relationship disputes, while other disputes, such as property damage disputes, property rights protection disputes and unjust enrichment disputes, accounted for about 30% of the case sample. The sample cases can be further subdivided into three categories: nuisance removal, economic damage, and procedural defects according to the claims and facts of the cases. Firstly, in the highest proportion of nuisance exclusion type cases, the main subjects involved are generally low-floor and high-floor owners, and the plaintiff's claim is mainly to exclude the defendant's obstructive behavior to the installation of elevators. Secondly, the economic damage type of cases is mainly due to the economic disputes arising from the addition of elevators, including the economic loss of housing depreciation, infringement of the adjacent rights of low floor owners caused by the loss, lost wages, etc. Finally, the procedural defects type of cases are mainly disputes arising from procedural defects in the process of convening, deliberating, and voting, which can be divided into two types fundamental defects and non-fundamental defects.

2.1.2 Administrative Disputes

Vested multi-story residential retrofitting elevator administrative disputes mainly involve the owners do not agree to the retrofitting of elevators on the matter involving the government approval of the retrofitting of elevators to bring administrative proceedings,

including the occupation of the district roads, green belts, and other reasons to request the withdrawal of the corresponding permit or planning approval. For example, the plaintiff as a retrofitting elevator residential property owner, because the retrofitting of electricity affects the stairwell ventilation and lighting, occupying the main roads in the district, etc., raised the significance of involving planning permission. But the street office still issued a no-objection document, making the elevator finally retrofitting completed.

2.2 Existing Dilemma

2.2.1 Differences in the Criteria for the Qualification of Litigation Subjects

In the existing sample cases, the existing multi-story residential retrofitting elevator cases in which the plaintiff does not meet the subject matter qualifications were dismissed by the court. After the filing of some cases, some judges suggested the plaintiff withdraw the lawsuit because of the main qualification of the plaintiff. It can be seen that there is no unified standard for the main qualification of the plaintiff in such cases in judicial practice, which will undoubtedly have a great impact on the trial and judgment of the relevant cases, thus hindering the implementation of the elevator installation.

2.2.2 Litigation Restrictions for Low-Floor Owners

In practice, the addition of elevators usually encroaches on public space, and the owners of the lower floors of residential buildings usually face the problem of reduced quality of life due to lighting, noise, ventilation, and other problems. However, as long as the owners vote on the addition of elevators, pass the matter, and obtain

planning permission, their actions are legal. For the completion of the approval procedures for the addition of the elevator project, even after the trial to confirm the administrative organs in violation of the procedural provisions to give the addition of the elevator project seal for the record, the court will not be because the elevator in question has been completed and revoke the approval made by the administrative organs to add an elevator. The claims of the owners of the lower floors generally cannot be supported by the court, and can only passively choose to negotiate with the owners of the upper floors to solve the problem of damaged interests.

2.2.3 Lack of Compensation Mechanism

The impact of lighting, noise, and ventilation brought by the addition of elevators will cause the quality of life of the low-floor owners to decline, and there are problems of interest such as the relative devaluation of the low floors, while the high-floor occupants in the matter of the addition of elevators may increase the rents that can be obtained when the houses are rented out by improving the living conditions of the high-floor owners, thus causing an imbalance of interests between the high and low floors. At this point, the imbalance of mind is caused by the impaired self-side interests of the low-floor owners, who do not receive the expected compensation, coupled with the increased interests of the high-floor owners. At present, there is no policy or other unified reference document on the balance of interests between the two in China to address the issue of whether low-floor owners are compensated, and most regional policies guiding elevator installation do not give specific detailed and operable standards. The lack of a compensation mechanism further increases the difficulty of owners' negotiation.

3. Analysis of Existing Rules

There are still many problems and differences in understanding in the application of Article 278 of the Civil Code to the retrofitting of elevators in existing multi-story residential buildings throughout China, and the interpretation of this rule in the voting agenda for the retrofitting of elevators will play a very important role in speeding up the process of retrofitting

3.1 Application of the Law

Since the Civil Law treats "changing the use of the common parts or using the common parts for business activities" as a matter jointly

decided by the owners, the attribution of the matter of elevator retrofitting has become the focus of controversy. In practice, the courts generally regard the matter as "alteration and reconstruction of buildings and their appurtenant facilities" as a prerequisite for the reasoning of the judgment, and then take the voting procedure stipulated in this article as the legal procedure for the addition of elevators, and this view also occupies the mainstream position at present. Regardless of the matter of adding an elevator in any of the above, the voting rule of "more than half in both aspects" as stipulated in Article 278 of the Civil Law applies. In early 2023, seven departments, including the Tianjin Municipal Housing and Urban-Rural Development Commission and the Municipal Planning and Resources Bureau, voted on the "Guidelines for the Installation of Additional Elevators in Existing Residential Buildings in Tianjin" by Article 278 of the Civil Law and the relevant administrative licensing law.

3.2 Scope of Consultation

The provisions of the Civil Law can solve the problem that the actual transformation process is hindered by the opposition of every individual owner, but there are still local regulations issued throughout the country as the basis for practical operation. At present, provinces and municipalities across the country are limited to the scope of residents' voting for the unit or the whole district, and the handling of different situations in specific practices varies and lacks unified identification standards. In the case of housing rental, the tenants are more consideration with their short-term interests and opposed to the addition of elevators, so the actual users of the exclusive part should not be included in the scope of the addition of elevators to solicit views. In addition, it should be clear that when the tenant is the tenant of the public housing lease should be the subject of membership rights, and thus enjoy the right to manage the matter of adding an elevator. Tianjin's "Guidance" limits the scope of consultation on the installation of additional elevators to "one building", which is currently the mainstream provision for consultation on elevator installation matters in all Chinese provinces. At the same time, the Guidance takes into account the actual situation in Tianjin and specifically states that the voting rules also apply to public housing tenants.

3.3 Participation in the Voting Form

In the matter of elevator retrofitting, the voting rules of the Civil Code have increased the participation of owners as an important indicator compared with the original Property Law. By setting the ratio of exclusive area to the number of owners to participate in the voting base, the Civil Code urges owners to actively participate in common management matters to ensure that the majority of owners exercise their rights and to reduce subsequent conflicts and disputes that may arise because the owners have not voted but the voting matter has been approved. This amendment to the Civil Code is intended to preserve the common right of owners of “minority subject to the majority” and to take into account the efficiency of voting.

3.4 Cost-Sharing and Compensation Mechanism

In the negotiation process of elevator retrofitting matters, the cost-sharing method is a major difficulty that causes the process to slow down. In the absence of unified guidance standards in China, the cost-sharing method is developed by each province according to its economic level and other factors. Tianjin’s “guidance” for the cost-sharing of the addition of elevators only provides that the applicant should be added to the elevator according to the floor and other factors by their consultation to share the co-financing, there are no more specific implementation standards or reference recommendations. On the other hand, the addition of elevators caused by the housing ventilation, lighting, and other interests of the owners of the damaged, generally take the same way to negotiate their compensation, but also due to the lack of guidance standards lead to the owners can not make a decision.

4. Discussion

Since the “Guiding Opinions” of Tianjin City only came into effect on March 1 this year, many owners of old neighborhoods still know the rules of voting on elevator retrofitting matters, so it is very important to do a good job of bridging and converting the old and new rules to promote the retrofitting of elevators in existing multi-story houses in Tianjin City.

As mentioned above, the owners jointly decide on matters in which the number of participants in voting on the exclusive area and the number of people will affect the proportion of the subsequent voting results required, then the application of the rules of procedure for the

addition of elevators is the first thing that should be analyzed is the scope of the vote to solicit opinions, and the determination of the scope to a certain extent to help distinguish the plaintiff’s subject matter qualifications for the addition of elevators. The majority voting method is to maintain the autonomy of the owners in the matter of the addition of elevators, while also taking into account the impact on the interests of a small number of owners. The owners of other units, as non-direct stakeholders in the matter of adding elevators, do not enjoy the right to vote because of the neighboring relationship. The damage arising from non-tort and abuse of rights in the conflict of rights is the inevitable derogation of interests brought about by concessions made by one party to resolve the deadlock in the exercise of rights. And indeed due to the installation of elevators and the interests of other unit building owners can be damaged through other ways to obtain relief and compensation, so the Tianjin Municipal “Guiding Opinions” will be the voting procedure of the consultation range limited to a building.

In real life, in response to the situation that the deliberations cannot be carried out due to the low participation rate of owners, some communities have formulated the rules of procedure to ensure the owners’ meeting by stipulating that “non-voting is considered as agreeing” or “non-voting is considered as agreeing with the majority opinion of owners”. In judicial practice, some courts have ruled that the owners’ meeting should be held normally. In judicial practice, some courts have recognized this view in their decisions based on the principle of autonomy, but have not elaborated on the percentage of owners’ participation required for voting on matters. “Participation in voting” should be a proactive behavior, “not to take a position as agreeing with the majority of owners” and other rules do not apply to the installation of elevators, and there is a contradiction with the understanding of Article 278 of the Civil Code. If the implementation of the provisions of the above rules of procedure, the participation of owners has not been improved, easily resulting in the adopted resolution, in reality, can not operate, not only contrary to the legislative intent of Article 278 of the Civil Code but also can not improve the existing multi-story residential installation of elevators in the contradiction between the

owners of the intensification of the problem.

On the other hand, existing multi-story residential retrofitting elevators as an important existing livelihood work, for the convenience of high floor owners, especially the elderly owners of travel, if the provisions of Article 278 of the Civil Code are interpreted too strictly, it will lead to retrofitting elevator matters difficult to pass, contrary to the needs of reality. In the voting procedure, the meaning of "participation" in "participation in voting" should not make the non-voting owners "forced to take a stand", nor should it be overly understood to limit the application of the rules. For the installation of elevators, the matter can be held in writing, excluding space and time for the owners of the General Assembly hindrance, to enhance the participation of owners.

The issue of cost-sharing between owners of high and low floors is a major obstacle to the retrofitting of existing homes, and the cost-sharing standards vary across the country. Tianjin City, "Guidance" pointed out that the most important factor in the cost-sharing criteria for the installation of elevators is the "floor". Previously, the pilot cost-sharing mechanism in Tianjin was specifically one or two floors of residents do not share the cost, while the third floor of the residents of a contribution ratio coefficient of 1, but from the fourth floor onwards every level, the proportion of the sharing coefficient will increase by 0.2, and so on.

According to the preliminary survey, the cost-sharing standards adopted by these pilot projects in Tianjin have been recognized by most owners. The addition of elevators to existing multi-story residential buildings belongs to the private rights of owners and is a part of the business management of residential communities, which must respect the principle of owner autonomy, while the cost-sharing mechanism with operability and recognition is conducive to improving the efficiency of owners' joint consultation to determine the cost-sharing method. Based on the reference "floor", Tianjin City can add the consideration "housing area" for the households on the same floor, and the larger the area of the households, the more the apportioned costs. The maintenance and management costs of the elevator after completion can continue to be financed concerning the cost-sharing standards for the construction of the elevator. Tianjin City for the

installation of elevators may involve compensation is not a uniform standard, the unit owners can negotiate, to resolve conflicts and disputes oriented flexible application of compensation standards.

When owners resolve disputes, they can first consult internally. Streets and communities can build a unified consultation platform and establish a consultation mechanism to assist residents to do a good job of communication and coordination. Since the coordination mechanism is not mandatory, some neighborhood committees and other institutions are reluctant to take the initiative to organize mediation work due to the complexity of the situation. Therefore, the use of the introduction of disinterested third parties to implement the system of hearings to resolve disputes arising from the installation of elevators can improve the efficiency of dispute resolution. Secondly, the people's mediation, arbitration mediation, and court mediation system can be fully utilized, community organizations do not influence the direction of mediation if the consultation and mediation can not apply for mediation by the relevant organizations or guide the owners to take legal procedures to defend their rights, the court will continue to pre-litigation mediation based on the neighborhood committee mediation after acceptance.

For judicial remedies, if the voting results are not satisfied, through consultation and mediation still can not reach a consensus, the interests of the owners of the damage can be civil litigation to ascertain the legality of the installation of the elevator resolution process, ordered other owners of their rights and interests damage to compensation. For the retrofitting process of the approval authority to file administrative litigation to prevent the installation of additional elevators for follow-up rights, the current practice is that if there are indeed illegal circumstances, taking into account the retrofitting of elevators with social welfare, revocation of administrative permits will bring huge loss consequences, it is considered that the administrative act is illegal, but not revoke the administrative permit. The current law for the jurisdiction of civil disputes is vague, the provisions of the subject and the specific power to exercise the authority are often different, and the obligation of the administrative ruling is not clear, which will complicate the dispute, so the use of the mechanism to resolve disputes on the

issue of adding elevators is not recommended.

In recent years, the State Council has strongly supported the retrofitting of elevators to existing multi-story residential buildings to promote the construction of barrier-free environments and the aging-appropriate transformation of public facilities. Exploring the legal basis and procedural design of dispute resolution can help resolve the conflict of interests of owners and accelerate the project process of installing elevators in existing multi-story residential buildings. We expect that in the future, Tianjin will have clearer regulations and policy guidance for disputes involving compensation and relief, cost sharing, and security measures for the retrofitting of elevators in existing multi-story residential buildings, to better protect the rights and interests of owners.

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