

*Legal Thinking on Improving of Chinese Affordable Housing Construction**

Zhang Fuqiang

Professor, Ph.D. Supervisor of Law school
South China University of Technology
Guangzhou, China
fuqiangz@163.com

Wang Yinghang

Ph.D. Candidates of Law School
South China University of Technology
Guangzhou, China
wyinghang@foxmail.com

Abstract— To protect the citizens' housing right is an important constitutional and legal liability of modern country. However, Chinese government has some difficulties to fulfill that in affordable housing providing and controlling aspects. Referring to the experience of the United States', Chinese government should promote housing policies to legal level and do more like Increasing the quantity of affordable housing, and clearing the government responsibility and protecting the funding sources to consummate a complete housing guarantee system.

Keywords—housing; government; legislation; construction

The housing problem is related to the national economy, people's livelihood, and social stability. Affordable housing institution is a symbol of social development, and an extension of social security system in the area of housing. Therefore, it's responsible for our government to protect citizens' housing right.

I. CHINESE GOVERNMENT HAS DIFFICULTIES TO FULFILL THE AFFORDABLE HOUSING LIABILITY

Currently, the high price of housing has resulted in a large number of "House Slaves" and "Ant Tribe"^a, which indicates that the Chinese government has difficulties to fulfill the affordable housing responsibility in different level.

A. *Fails to fulfill the Constitutional responsibility: doesn't provide enough affordable housing.*

Protecting citizens' housing right is a legal obligation of government according to the Constitution, which requires the government to provide adequate affordable housing to meet the basic needs of social vulnerable groups. However, because of the financial pressure in recent years, special fund for affordable housing is too scarce to meet the demand, which causes a certain gap between the Constitution and the reality.

According to the satisfaction survey held by Tsinghua University Media Research Lab on Feb.2012, 82.8% of interviewees considered that affordable housing is an essential

public service, but only less than 6% of the population who is enjoying the subsistence allowances can apply affordable housing. [1] Meanwhile, the State Department plans to build 36 million units of affordable housing during the 12th five-year-plan- period, which means the annual investment is about 1.3 - 1.4 trillion RMB. In 2012, only 800 billion RMB is used for affordable housing construction, including 289 billion RMB out of 2890 billion RMB land transfer payment, 300 billion RMB from Statutory Common Reserve and the allocation from center government, which is far from the needs of 1.4 trillion RMB for affordable housing. Therefore, without changing the current Real Estate Tax policies, speeding up the legislative work in the area of affordable housing, or increasing investment, it is difficult to achieve the goal to protect citizens' housing right.

B. *Fails to fulfill the liability in the area of economic law: suppress the house prices by administrative measures*

Economic law is based on social and public benefits. Economy Law requires the government to macro-control the real estate market, so as to form an orderly, adaptable market. However, in recent years, the central government emphasizes the economic development much more than the public interest, and ignores the protective and fair functions of housing policies, thus fails to fulfill the liability in the area of economic law.

In 2003, Chinese government regarded the real estate industry as a major pillar industry. Since then, it has published 40 macro-economic policies related to real estate directly, which caused land and house prices soaring. In order to curb the housing prices, the State Department has put forward control measures many times, and the measures they used have been tougher and tougher. But every control became a catalyst to housing prices, pushing prices to get a high point again and again. According to the NBS (National Bureau of Statistics), during 2003 to 2012, the national land price had an average annual increase of 22.9 %, while house prices rose 16.1 %. The first half of 2013, Five Regulations were introduced to make the prices fall down.^b But six months later, nationwide house prices reached to a new highest in July, especially in Beijing, rose 18.3%.Control measures has become a booster to prices.

* The paper is a staged achievement of the National Social Science Project of China," The top-level design of real-estate-tax and land tax legislation under the value of tax fairness and justice"(NO.14BFX098)

^a"Ant tribe" means the college graduates with low-income inhabited by groups like ants,

^b Five Regulations refers to the executive meeting of the State Council identified five policy measures to strengthen the real estate market regulation in 2013.

In Feb. 2014, 69 of 70 large and medium-sized cities' house price rose, and the highest increase was 15.9 %. Beijing's, Shanghai's, Guangzhou's and Shenzhen's house price still rose ahead. All the data indicates that the intention of policies is to suppress the price, but the method they used were wrong. They used administrative measures instead of market-based measures or legal measures, nor a combination of the two. Authoritative and compulsory administrative measures will impede the free development of the market seriously, whose fundamental reason is that the boundary of government and market is not clear.

C. *Fails to fulfill the liability in the area of tax law: tax system does not include the land transfer payment*

The mission of tax law is to straighten out the property distribution relationship between the State and citizens, to meet the needs for public goods. [2] Tax law endows the government with taxation power to provide public goods. As a kind of public goods, affordable housing should be enjoyed by the taxpayers. Nevertheless, the government fails to fulfill the liability in the area of tax law in reality.

Some people said that Chinese housing prices depended on the land prices. The recent regulations and policies perhaps were not perfect, but it illustrated the government has really tried to fulfill the responsibility at least. What the government did not catch is the central reason: land transfer payment. Land transfer payment is government fiscal -budgetary revenue, and its flow has not been clarified yet. According to public statistics, in 2013, the total revenue of land transfer payment was 3.637131 trillion RMB. But such revenue was out of the financial revenue system, which became an important way to increase the local government finance, also led the house prices increase naturally. In fact, the profit of government is obtained by pressing the real estate enterprises interests. The real estate industry would shift the tax burden to consumers. The consumers who are in the lowest downstream of the value chain bear the entire burden. So, the presence of land transfer payment causes a serious problem in the primary land market. It should be transformed into land tax by the legislation.

II. REFERENCE OF THE UNITED STATES AFFORDABLE HOUSING LEGISLATIVE EXPERIENCE

Throughout the history of the establishment and development of the U.S. housing security system, we can find their housing policies were instituted in legal form basically. The government is committed to protect the housing right of residents in legal dimension by helping them to own housing. At the same time, it developed a large number of housing laws and regulations to regulate the housing market, and constrained the behavior of all subjects to ensure the implementation of housing policies, especially the establishment of affordable housing system.

A. *Establish a legal housing system*

Because of emphasizing legal system, housing security policies can rely on the laws, and thus ensure the policies authoritative and effective, which are prominent characteristics of the U.S. housing security system. There is no programmatic document in the U.S. housing law. The definition that the government is the subject to provide affordable housing is

mainly clear through several laws, and their legislative purpose is "Let most of people can afford the house."

In 1937, "Housing Act of 1937" created a precedent that federal government funded public housing. The specific way was that the construction, maintenance and management funds were collected by the federal government. The supervision was in charge by local or state government, while the Housing Bureau owned the property.[3]

In 1968, the "Housing and Urban Development Act of 1968" allowed developers to get a below-market interest rate with the condition of providing below-market rents housing for low-income, the interest balance was subsidized by the government.

In 1974, Sec 105 (a) 24 of "Housing and Community Development Act of 1974" can be seen as a watershed of housing policies in American history. Before that, all the housing policies were supplying housing to the low and medium-income groups. [4] After that, housing support is focusing on direct subsidies to those who need to improve their ability to pay rent.

In 1990, the Bush Government instituted the "Cranston-Gonzalez National Affordable Housing Act of 1990".It helped the lessee use existing housing effectively by guarantees and credit. According to the provisions of section 103, the role of local government and local non-profit community development organizations has been strengthened in the local housing construction. [5]

In 1997,"Public Housing Management Reform Act of 1997" made significant amendments for "Housing Act of 1937", including public housing and rent reform, public housing renovation and rent assistance, family grants scheme and so on. The intent of the act was to remove public housing program for low-income families and housing rental assistance programs, and to increase community management and control these items. [6]

In 1998, the U.S. Congress re-introduced legal control measures for public housing in the "Quality Housing and Work Responsibility Act of 1998". It provided that only when the family's income is 30% less than the area average, can they receive the rental housing vouchers for the first time. The act authorized Housing Management Departments to check it.

In summary, from the Federation to the states, the U.S. government established a comprehensive legal system of affordable housing in the past 90 years. These bills had certain significance for the construction of affordable housing around the world.

B. *Support the affordable housing system by multi-channel*

Currently, there are three forms of housing support provided by the federal government: First is public housing construction; second is rent subsidies to help low-income families obtain private market housing ; Third is providing the financial and tax support for families to purchase housing , including discount loans, guarantees and loan interest deducted from Individual Income Tax. As time goes by, public housing construction did not exist anymore, financial and tax support has become a widespread support model.

Among them, public housing is a kind of house that the United States Government construct, maintain, manage and charge for a low rent for the low-income, elderly and disabled people. Public housing construction focused on increasing housing supplies, including public housing constructed by government directly, government subsidy, low-income housing constructed by private institutions or non-profit organizations. The former serves for low-income, the elderly and disabled people. In the United States, low-income families are defined as people whose income below 80% of the national or local incomes median line, extremely low -income families are below 50 % of the line. The latter is started in 1960s. The federal government sought various means to stimulate private enterprise initiative to expand the supply of public housing. These actions increased the supplies of low-income housing, but also exposed malpractices like high cost, poor quality and so on in the mid-1970s.

According to Sec11 in “Housing Act of 1937”, government must provide rent subsidies which means lower rental housing for low-income families, and pay 75% of the rent for them, which means the lessee can just pay 25% remained. In the subsequent revised version, the rent subsidy scheme extended to retired people and families with incomes below 80% of the national or local incomes median line.

The U.S. government has adopted various fiscal and financial measures to solve the housing problems. In terms of monetary policies, the U.S. government and private financial institutions were all engaged in real estate loans, especially personal residential mortgage loans. In 1990, the strategy of “Private Estate “developed, a large number of public housing had been sold. In 2003, “First Payment Subsidy Scheme” which provided \$ 200 million per year carried out, every low-income family was subsidized \$ 10,000 or 6% of down payment. In terms of financial policies, the federal government introduced a series of tax reform in 1980s, accelerated the development of homeownership. Tax reform in 1986 changed the business model of low-cost housing fundamentally, lower barriers to entry borrowing for both sides, which greatly stimulated the desire of residents bought house with loan.

C. *Establish a management system of affordable housing*

The United States has a perfect management system in the area of affordable housing. First of all, at the federal level, Housing and Urban Development Department is mainly in charge of public housing construction and management; at the local level, Public Housing Authority is responsible for managing the regional housing issues. Housing and Urban Development Department provides financial support, but also technical and professional guidance to plan, develop and manage public housing projects. Secondly, the Federal Housing Administration (FHA), and Veterans Administration (VA) were set up, provided mortgage insurance for low-income families, veterans and their families respectively. Finally, Fannie Mae (the Federal National Mortgage Association) , Jenny America (Government National Mortgage Association) , and Freddie Mac (Federal Home Loan Mortgage Corporation) , these three government agencies were set up , whose main function is to provide loans in secondary market , providing mortgage insurance and funds to enhance the liquidity of the stock of loans. Because of the existence of these

administrations, the U.S. government can make housing policies timely.

As the development of the U.S. affordable housing, a lots of social problems appeared, such as apartheid, concentration of the poverty, serious violent crimes, and even some public housing had fallen into serious decline situation. After the 1990s, the federal government began to transform the decaying public housing in a large-scale, in order to achieve a comprehensive revival of public housing communities. “HOPE VI” was an important program introduced by the U.S. Housing and Urban Development Department. It demolished the abandoned public housing and replaced with modern design, low-density, high-quality housing, provided a better community support services, to attract higher-income residents to move in, to form a new type of community of diverse ethnic, mix of all level incomes. In 2009, “HOPE VI” received a \$ 120 million budget; however, in 2010 no funds were budgeted for “HOPE VI” and a new Choice Neighborhoods program had a proposed budget of \$ 250 million. Over the course of 15 years, “HOPE VI” grants were used to demolish 96,200 public housing units and produce 107,800 new or renovated housing units, of which 56,800 units were to be affordable to the lowest-income households.

On the basis of “HOPE VI” successful experience, the Obama Government launched a “Featured Residential Program “in 2010, as a further expansion to “HOPE VI”. Compared with “HOPE VI”, “Featured Residential Program “emphasized the development of the housing facilities and sustainability. Although Construction of facilities was the main content of “HOPE VI”, according to the distribution payments situation, over 90% were used in the reconstruction of public housing, while the fund for building schools, hospitals and other facilities was very limited. The “Featured Residential Program” linked the revive public housing together with education reform and regard the quality of education as a major goal. In addition, its participants are broader. The funds of “HOPE VI” were mainly allocated to the local Public Housing Bureaus, but in the Featured Residential Program, besides the local Public Housing Bureaus, nonprofit organizations, real estate developers can also apply for project funding, which can leveraging private capital to participate in the reconstruction and rehabilitation of public housing better.[7]

III. LEGISLATIVE PROPOSALS FOR CHINA

Obviously, a blameless legal system is the fundamental guarantee of housing construction development. Modern government should realize that the affordable housing process is embarrassed, and should analyze the reasons. Through referring to advanced foreign legislative experience, the strategy mainly by legislation and complementarily by policy would change the current status. Taking effective measures to promote the implementation process would achieve the goal ultimately.

A. *Accelerate the establishment of Chinese Housing Law*

Till now, China has not formed varieties of low-rent housing, affordable housing, and public rental housing. To resolve this problem fundamentally, the most important thing is to accelerate the establishment of Chinese housing law.

On the legislative front, the plan to institute Housing Law has been provided since 1983, but for some reasons the housing reform has still been in progress, so the housing law has not been formulated yet. The only document has published is the Approach of the Urban Lowest Income Families Apply, Review and Exit for Low-Rent Housing in 2005. It has not so much effect because it is not a law. Now, as the demand rising, more and more people expect to formulate a housing law. In view of this, we can learn from the practice of the United States to establish a housing law compliance with Chinese national conditions. It should include the government obligation in supply, capital investment, land providing, financial support, tax incentives, daily operations like program, construction, distribution and circulation, and the division of responsibilities within the government at different levels.

B. *Solve the affordable housing problems by multi-channel*

Chinese affordable housing includes low-rent housing, public rental housing, resident houses for low-and-medium wage earners and limit-price commercial housing. Their common feature is providing houses by the government directly or indirectly, so the costs are huge and difficult to afford. According to the history of the United States, during the housing market supply shortage, providing houses directly is one of the main approaches. With the supply abundant, rent subsidies develop into a shelter housing security mode gradually. This way can ensure that government subsidies are given to the crowd who really in need and reduce the costs, improve the efficiency of the stock of housing. American housing security has been indeed changed from housing subsidies to cash subsidies clearly. Economic studies have shown that the housing subsidies would distort the market and separate the affordable housing market and normal housing market. Therefore, we can adopt the housing voucher, rent subsidies and other more direct and more flexible methods. Residential people can choose the appropriate house according to their needs, avoid social problems. It can also be good for a balanced development between different regions.

C. *Clear the government responsibility in the field of affordable housing*

Although the United States support for free competition, but in the aspect of housing security, the government has adopted various methods for intervention. Chinese government should also carry the responsibility to solve the housing difficulties of low-income families. Taking it into account that the development degrees of regions are totally different, so local governments should play an important role. Meanwhile, integrating the Chinese urban reform, it should try to avoid the division between rich and poor regions.

However, China has been a developing country for a long period with limited financial capacity. Therefore, we should adhere to the "Protecting Moderately and Multi- Layered" principle, which can not only make sure different income levels enjoy varying degrees of protection but also save expenditure,

reduce the government's burden . To this end, the first thing is to determine the scope and level of protection and establish the standard and qualification examination system of application, so as to ensure that the applicants are really in need.

D. *Protect the funding sources of affordable housing*

Chinese construction fund of affordable housing mainly comes from housing fund and land transfer payment. The housing fund has been brought in since 1991 from Singapore. But its coverage is not enough, channels are narrow and the whole operation is not very smooth. So we can refer to the U.S. experience that prompt developers to lease part of the housing at below-market prices by tax relief, incentives of floor area ratio and building density, at the same time, housing fund system should be incorporated into the financial system formally to build an affordable housing finance systems with Chinese characteristics.

About land transfer payment in China, there are all kinds of corruptions creep in. Firstly, the land transfer payment has become a push to housing prices; Secondly, there is no specific regulation about the land transfer payment, which should be included in the tax system, so the calculation and operation is very complicated and unclearly. If the land transfer payment is included in tax system, the government may be taxed in accordance with the uniform, helps to improve tax transparency and reduce tax costs. Therefore, it is recommended that all levels of government put 10% of land transfer payment to the construction of affordable housing, and increase the proportion to 20 % -30 % according to the needs in the form of laws gradually.

Furthermore, besides increasing government investment, financial products and innovative services should be promoted actively. By establishing a sound financing mechanism and platform, we should start real estate investment trusts pilot through long-term bank loans, equity financing and a variety of ways, to guide social capital to participate in affordable housing construction.

REFERENCES

- [1] Ouyang Haiyan, Satisfaction Survey about Public Service in 15 Cities. Chinese Well-off, 3(2011).
- [2] Zhang Fuqiang, Tax Law Thoughts on Concept, Essence and Characteristics. Anhui University Law Review, 2(2007).
- [3] The United States Housing Act of 1937
- [4] Sun Lei & Lin Nan, The Thinking of Our Country Low-Rent Housing Construction by Referring to Public Housing System in the United States, The Theoretical Circle, 7(2009).
- [5] Cranston-Gonzalez National Affordable Housing Act of 1990 Sec 103.
- [6] Yin Huibin, The U.S. Sub-Prime Mortgage Crisis Has Impact on Chinese Housing Security System, The Chinese and Foreign Entrepreneurs, 14(2009).
- [7] Obama Administration Announces Programs To Improve Residential Building Energy Efficiency, Posted on November 10th, 2010 by J. Cullen Howe Columbia Law School.