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The Right of Pre-emption in Selling Portions of Apartment Flats: Examination and Analysis

Mohammad Javad Heydarian Dolatabadi[a]- Rasul Mazaheri Kuhanestani[b*]

[a] M.A Student of International Law, University of Judicial Sciences and Administrative Services of Justice, Tehran, Iran.

[b] Assistant Professor of Law, Faculty of Administrative Sciences and Economics, University of Isfahan, Isfahan, Iran (Corresponding Author).

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ABSTRACT

Exercising the right of pre-emption is one of the coercive grounds of ownership in jurisprudence and statute laws of Iran, which can benefit the person hold the aforesaid right in immovable transactions in case of the fulfillment of legal conditions. Joint utilization in shared ownership of immovable property and joint ownership of passage and waterway in Imami jurisprudence is one of the factors in the emergence of the right of pre-emption. In popular jurisprudence, in addition to the two aforementioned factors, the proximity of the two properties (i.e., being neighborhood) is another ground for the realization of the right of pre-emption. Owing to the ever-increasing rise in population and the subsequent need for housing, the issue of construction and use of apartment flats and their dealings has become gained more prominence among various members of the society. Moreover, the diversity of needs of residents and neighbors has led to a wide range of dealing related to different parts of apartments such as storage rooms and parking spaces. The common ownership of apartments in the land and premises and the sharing of ownership of passages (that is, corridors, lobbies, elevators) and waterways (water pipes and installations) have made all led to the high relevance of the right of pre-emption in dealings of apartments and their parts. As such, the purpose of this study was to address whether the right of pre-emption can be considered and implemented regarding the portions of apartment building and whether this implementation is in accordance with the law of ownership of apartments and the contents stipulated in the civil law, that is, articles 808 et seq. The authors concluded that although it is possible to exercise the right of pre-emption in the sale of apartment units and the sale of its different parts, it suffers from more restrictions than other real estate dealings and there are fewer instances of the right of pre-emption in apartment transactions than in other real estate transactions according to the criteria set out in the Apartment Ownership Law and its by-laws, as well as the instructions for separating apartments.

Keywords: Pre-emption, Exercising the Right of Pre-emption, Apartment Flat, Apartment Ownership.

* E_mail: r.mazaheri@ase.ui.ac.ir

1. INTRODUCTION

Under Article 140 of the Civil Code, exercising the right of pre-emption is deemed a ground of ownership However, according to the rule of domination, exercising the right of pre-emption should be considered contrary to the principle and hence an exception. As a result, exercising the right of pre-emption is valid only in definite cases, and it cannot be employed in uncertain cases. Considering that the right if pre-emption is performed by the will of one party, it is deemed as a unilateral legal act.

Apartment is derived from the French word "Appartement", and the Academy of Persian Literature has chosen the term "Kashane" as its literal equivalent. The apartment is a part of a large building, which is separated from the rest of a building and has several rooms. An apartment is therefore a dwelling made of one or more rooms and parts such as kitchen, bathroom, and living room, along with others that together form a unit. With the expansion of urbanization and the increase of constructions in recent decades, apartment-living lifestyles have increased rapidly in most cities of Iran, leading to a plethora of legal, economic, social, and cultural implications. Rising land prices and the ever-rising population growth have led to a trend of people choosing apartments as a residence. On the other hand, the concentration of economic activities in the housing and construction sector in recent years has led to a boom in housing dealings and the subsequent sale and purchase of apartments.

The popular theory is that the right of pre-emption is commonplace in real estate dealing, and the Civil Code has observed the popular theory in developing Article 808. The right of pre-emption in immovable accessories such as the premises and trees are subject to their sale along with the land, and if the premises and accessories are sold without land and separately, the right of pre-emption is not applicable thereon. Therefore, if one of the common partners of the two parts of the building, who wants to sell only his share of improvements to a third party of land jointly owned by the two mentioned persons, the right of pre-emption will not be created for the partner. Imami jurists consider sharing in the sale and sharing in passage and waterway to lead to the right of pre-emption, but common jurists, in addition to these two, also consider the wall-to-wall neighbor to lead to the formation of the right of pre-emption (including pipes and streams).

2. THE NOTION OF THE RIGHT OF PRE-EMPTION

Scholars of civil law have each provided their definition on the matter. Mustafa Adl states that "Pre-emption is the entitlement of one of the two partners to acquire the common share of the other partner from the distributable immovable property if the said partner intends to relinquish his/her share to a third party for sale[1]."

Professor Dr. Seyyed Hassan Emami argues that "the right of pre-emption is the acquisition of a share sold by a partner by another partner[2].

3. PREREQUISITES OF THE RIGHT OF PRE-EMPTION

The following are the Prerequisites of the right of pre-emption:

3.1. Immovability of the Subject Property of the Right of Pre-emption

In Article 808 of the Civil Code, the legislator explicitly mentions immovable property and hence excluding any movable property from the scope of the right of pre-emption. Furthermore, in Article 809, which has explicitly mentioned secondary immovable property such as buildings and trees, the legislator has made clear that it only intends natural immovable property. As such, the legislature thus sought to approve the views of those who believed in restricting the subject matter of the right of pre-emption.

3.2. Divisibility of the Subject of the Right of Pre-emption

Given the descriptions offered for the previous conditions, it became clear that the right of pre-emption flows originally in the natural immovable property and subsequently in the secondary immovable property such as the building and the tree, and there hence is no pre-emption in the movable property. Another condition that some jurists have set for the right of pre-emption is divisibility, which is discussed in more details below:

The jurists supporting the condition of divisibility argue that indivisible property is a property from the division of which a loss arises, yet there no consensus on what makes up the loss. In general, opinions in this regard can be divided into three categories, each of which its proponents:

1. The loss of the benefit intended of property;
2. A severe reduction in the value of property after division;
3. The complete loss of benefit from the property[3];

Following the opinion of later jurists, the legislator has recognized the condition of Divisibility of the property and has provided hence in Article 808 of the Civil Code that "If a divisible immovable property is shared by two persons ..."

One of the commentators of civil law states in this regard that "although at first, it may seem that because the purpose of exercising pre-emption is to prevent further harm in the division, and in the case of indivisible property, the harm is more noticeable, the right of the pre-emption shall flow to prevent harm, if the mentioned argument is to be accepted, it should be taken into account that in general, the price of a portion of a property is less than the real price of that property divided by that share, that is, if for example, three sixth

of a property is worth 30,000 Rials, the entirety of the property exclusively owned by one person would be worth more than sixty thousand Rials, while compared to the three sixth part, it should be worth the same amount, and this price defect In indivisible properties is more tangible than divisible properties. Therefore, if the joint owner of the undivided property was given the right of pre-emption, he/she could have obtained a great benefit to the detriment of the buyer in this way and without any other grounds, and to avoid this situation, the right of pre-emption has been assumed in an indivisible property[4].

Another scholar states that "there are two possibilities as to what harm is the right of pre-emption given to the partner is supposed to avoid:

1. Loss due to joint ownership: joint ownership of the property limits its benefits and hinders the owner's independence in possession, for which pre-emption can be a remedy. Yet, by the legal acquisition of the sold share, the person having the right will be able to access all the property and get rid of the confinement of joint ownership.

Nevertheless, this probability is low. Because, the loss stemming from joint ownership shapes from the very beginning of the acquisition and is something that both partners have agreed to it, but the right of pre-emption occurs when one of the two partners intends to sell his/her share. Therefore, to distinguish the cause and basis of the right of pre-emption, the loss from conveyance must be studied.

2. Loss from conveyance (sale): The sale of the partner's share does not change the status of the joint ownership and changes only one of the two partners, replacing the partner with the new buyer. This loss is also sometimes unbearable, because the full use of the common property is subject to coexistence and reconciliation, and the new and unwanted partner may disrupt the previous inertial calm. In this case, if the property is divisible, either of the two incompatible partners can redeem oneself by requesting a division, and only the loss due to the cost of the division and sometimes the damage to the quality of the utilization may bother either of the joint owners. However, if the property is not divisible, the loss from the sale is oftentimes highly pronounced and the only way out is to exercise the right of pre-emption. Therefore, if the loss resulting from the sale and incurrence of an unwanted partner is the grounds for the formation of the right of pre-emption, the indivisible property is of higher priority in exercising the right.

Nevertheless, the developers of the Civil Code have followed the popular view in jurisprudence, have assumed the right of pre-emption to be for divisible property (Article 808 of the Civil Code). Therefore, it seems that they have considered the loss resulting from the request for division as the grounds for the right of pre-emption, or as some jurists have stated, the developed have intended to attribute an exceptional rule against the spirit pre-emption be assigned to a case in which there is no doubt or disagreement[5]".

3.3. Joint Ownership

The right of pre-emption arises for a person who jointly owns the subject property during the sale, that is, if there was a division before the sale, there will be no right of pre-emption. Neighbors do not benefit from the right of pre-emption because they are not joint owners. In Article 808 of the Civil Code, the legislature explicitly states current ownership of the property as a condition for the formation of a right of pre-emption, stating "Whenever a divisible immovable property is jointly owned by two persons …".

3.4. Limitation of Number of Joint Owners to Two People

In several articles of the Civil Code, the legislator has pointed out the need for partners to be limited to two people and has exhibited signs of adherence to popular opinion. Article 808 states that "Whenever a divisible immovable property is jointly owned by two persons...". Furthermore, Article 810 states: that If the property of two people is shared in a passage or waterway ..." while Article 811 states that "If the share of one of the two partners is endowment ..."

One of the scholars of the Civil Code argues in this regard that "for the right of pre-emption to be applicable, the number of joint owners must not be more than two, otherwise, in the case where the number of partners is more than two, it will not be clear for whom the right is reversed. Sheikh Yusuf Bahrani argues that the prerequisite for the rational and narrative reason of the book, tradition, and consensus is the impermissibility of seizing other people's property except with his/her permission, and pre-emption would be contrary to the argument that all are agreed upon and trusted by the jurists. Hence, there is no choice but to have clear proof from either the book, the tradition, or the consensus that there are no other instances than the sale in which the pre-emption permit has been claimed. the last thing that is extracted about pre-emption is that its permission is only granted in conveyance in the transfer is only by sale, and the claimant of the pre-emption in the delegating the right to a non-seller needs proof, otherwise, it would fail short of the philosophy behind the statement "seizure of property is not permissible unless it is taken out with the permission of its owner[6]".

3.5. Conveyance of Joint Share Through Sale

In the Civil Code, the legislature has numerously mentioned, either explicitly or implicitly, the term sale in articles regarding pre-emption, the most important of which is stipulation of Article 808, in that "Whenever a divisible immovable property is jointly owned by two persons and one of the two partners conveys his/her share to a third party for sale …". Article 816 also stipulates that "exercising the right of pre-emption invalidates any dealings that the customer has made

before the obtaining and after the contract of sale of the subject of the right."

Some jurists state in this regard that "this condition is legally unjustifiable and it seems that only following the popular opinion in jurisprudence has forced the developed of civil law to be cautious in this regard[7]".

Another scholar argues that "acquisition by pre-emption is possible in cases where the transfer is for sale and not for other purposes, as in the contract of sale, the personal details of the client do not interfere in the transaction and the seller simply intends to sell his/her property and get a price therefrom. In contracts with a transfer nature, such as donation or settlement, the personality of the party is involved to some extent, and the conveyor would have otherwise rescinded from the deal or may have adopted another instrument of financial remedy, as there are no rights of pre-emption in the aforementioned dealings. Article 759 has clarified the same point regarding settlements, stipulating that the right of pre-emption does not apply to settlement, even if it is in the position of sale[8]".

4. EXAMPLES OF PASSAGE AND WATERWAY IN THE APARTMENT

In legal terms, the spaces where residents can use to trespass are called "passages" and places where water flows are called "waterways". In apartments, the entrance, elevators, and corridors are known as passages, and all water and sewage pipes, heating and cooling installations, fire extinguishing systems, are considered waterways. Article 810 of the civil code assumes the joint ownership of two persons in the passage and the waterway to be grounds for the right of pre-emption for the partners when the other party intends to sell the property with the passage and the waterway. Therefore, when the owner of an apartment seeks to sell his/her apartment, he/she sells the undivided share in the land and, consequently, the passages and water pipes (Katouzian, 2011, p. 220). In some apartments where the number of flats is not high, all water, sewage, gas, and utility ducts are installed separately for each flat, and hence, the partnership is only applicable to the passage (corridors, stairs, elevators, etc.).

Although the sale of passage, waterway, and water pipes are not mentioned in the trading of apartment flat and some people may refer to the last part of Article 810, which states that "if the property is sold without passage and waterway, there is no right of pre-emption" to exclude the sale of apartments from the right of pre-emption, according to Article 103 of the Apartment Ownership Law and Articles 3 and 4 of the by-laws of the said law, in case of transfer of the exclusive part of the apartments, the owners' rights in the shared parts will be coercively conveyed. Furthermore, it is not possible to physically abstain from the rights of owners in private and shared areas, because the architectural structure of the apartments and the way the pipes and facilities of the apartments are installed make it impossible (Sheikh Mofid, 1990).

5. APARTMENT OWNERSHIP IN THE STATUTE LAWS OF IRAN

In our country, apartment ownership is recognized according to Articles 125 to 129 of the Civil Code in accordance with Imami jurisprudence, and the limits of ownership and the duties and rights of owners are explicitly and definitively stated. According to Article 125 of the Civil Code, the possessions of each of the owners from the lower and upper floors in the shared ceiling are permissible to the extent of not disturbing other floors. The nature of the apartment is associated with shared ownership because multiple owners have shared ownership in several parts of the property. Article 4 of the corresponding by-law elaborates the shared parts of the apartment. According to Article 126 of the Civil Code, the walls of each room (flats) are considered private property and the ceiling between the two floors is shared property. It should be noted that this assumption is applicable in cases where each floor is made up of just one floor, but in most current apartment settings, where each floor consists of several separate flats, the walls between the flats are considered shared property and are not hence considered private property. This is also mentioned in Note (c) of Article 4 of the Executive Regulations of the Apartment Ownership Law. Article 1 of the Law on Ownership of Apartments classifies the ownership of the apartment into two parts, namely private and shared. Article 2 defines the shared parts as parts that belong to all the owners in proportion to their private parts. Moreover, Article 4 of the same law provides the rights and duties and share of each owner of the expenses of the common parts as proportional to the ratio of the area of the private share to the total area of the private parts of the whole building, unless otherwise arranged between the owners. Under Article 6 of the Apartment Ownership Law, all decisions related to the administration and affairs related to the common parts are determined based on the majority of votes of the owners who have more than half of the area of all the private parts. Regarding the shared ownership of land among apartment owners, Article 10 of the law stipulated that everyone who buys an apartment flat holds a common share in the land on which the premises are built or attributed thereto, in proportion to the area of the private part of one's purchase (Shahid Thani, 1955, p. 58). According to the provisions of Article 809 of the Civil Code and the by-laws related to the ownership of apartments, some scholars argued that the right of pre-emption does not apply to, and hence cannot be implemented in, apartments under any circumstances[9]. However, this theory is not valid, as, although the prevailing assumption on apartment buildings is that of multiple owners and premises, there are some scenarios in apartment-flat the right of

pre-emption is feasible and a general statement in this regard as such is not consistent with legal standards (Mirza-Qomi, 1992).

6. EXERCISING THE RIGHT OF PRE-EMPTION IN DIFFERENT CASES OF OWNERSHIP IN APARTMENTS

1. If the ownership of the land and floors of the constructed buildings is shared among multiple owners, there will be no right of pre-emption due to the multiplicity of owners, because according to Article 808 of the Civil Code, pre-emption is only applicable for two owners (Sheikh Hor Ameli).
2. If the apartment building, including its land, floors, and the flats, is owned exclusively by two people, the right of pre-emption is definite therebetween for the sale of each flat or any part of the premises, as the conditions for exercising the right of pre-emption are applicable.
3. If the floors of a building are privately owned by two people but the land of this building is shared between two owners, the right of pre-emption in the sale of each flat of the building is reserved for the other, because according to Article 10 of the Apartment Ownership Law, each owner also jointly owns a proportional share of the land in proportion to his/her private ownership. By conveying the apartment, the seller sells the joint share in the land and provides the ground for creating the right of pre-emption (Katouzian, 2011, p. 220). Today, due to the expansion of apartment construction and the prevalence of the practice of two people jointly buying land and building apartment building, exercising the right of pre-emption in the sale of each apartment flat by each partner is legally perceivable (Shahid Thani, 1976).
4. Article 10 of the Apartment Ownership Law has established that everyone who buys an apartment will be also the shared ownership of the land on which the premises are placed, which would be in proportion to the area of his/her private share. As such, buying and selling an apartment flat is not legally conceivable without buying and selling a shared portion of land, but the article assumes a scenario that the land belongs to another person owing to the endowment, donations, or other reasons, in which case the ownership of these shared lands will not be conveyed through buying and selling the flat, and each buyer will be obliged to pay the rent equal to the shared portion of his/her exploitation of the land. In this case, ownership of the land is addressed completely separately from the ownership of the premises, and if the owners of the improvements are by only two people, a right of pre-emption is reserved in the sale of each flat for the other partner. Moreover, according to Article 810 of the Civil Code which addresses joint ownership of corridors, pipes, and utilities, among others (that is, passage and waterway), if these two partners have joint ownership of flats, each one would have the right of pre-emption if the other intends to sell all or parts of his/her share to a third party. Of course, the exercise of this right is conditional on the owner of the land not imposing any restrictions on the owner of premises for such conveyance, as in contracts which landowners (whether government, donations, or other persons) conclude with others for the construction of premises in the form of a lease contract, conditions such as prioritizing the sale to the landowner or obtaining a permit or paying a fee, among others are included while acknowledging the tenants' ownership of the improvements (Mousavi Khomeini).
5. If two persons are joint owners of an apartment flat and one of them intends to sell his/her share of ownership or part of his share of ownership, given that the ownership of both partners is itself of joint nature with one or several other owners, right of pre-emption would not be exercisable for the other owner. Moreover, according to Article 808 of the Civil Code, the divisibility of immovable property is one of the conditions for the right of pre-emption, in which case a flat is oftentimes not dividable into two flats, and therefore the right of pre-emption would not be applicable. One of the instances of this situation is when a person owns the entirety of an apartment flat who is survived by two people after his/her death, one of whom intends to sell his/her share of the inheritance to a third party. Given the aforementioned argument, the right of pre-emption would not apply to the other heir. Also, if the partner dies without no heir, it seems that a competent authority from the government (ruler) can decide on the right of pre-emption (Katouzian, 2011, p. 220).

6.1. Assuming that the Share of One of the Co-owners is Endowed

A person can be the co-owner of an endowment initially or through a particular act. If the partner decides to act upon his/her share, the sale of the endowed property can create a right of pre-emption for the other joint owner if certain conditions are met because the endowment share is recognized as a property by the endowment personality of one owner and the multiplicity of endowers does not lead to the assumption of joint ownership. However, pursuant to Article 811 of the Civil Code, in the opposite scenario, that is, when the partner sells his property share, there is no right of pre-emption for the endower or the trustee, because the right of pre-emption is only applicable where the property is shared between the owners who can independently sell their share (Najafi, 1983, p. 268).

6.2. Ownership of a Legal Entity

As previously mentioned, a partnership between two people is one of the prerequisites of the right of pre-emption. Nevertheless, being a legal or natural entity does not influence the subject matter. Therefore, if the owner is a legal person, it can act as a natural

person concerning other conditions regarding the application of the right of pre-emption and the number of shareholders or partners of the legal entity also does not affect this issue, since, according to Article 588 of the Commercial Code, there seems to be no conflict with the provisions of civil law and jurisprudential principles in the exercise of the right of pre-emption by a legal entity, while also no distinction can be made for different legal entities. However, one scholar has assumed different implications for different types of legal entities and has not considered the right of pre-emption to be applicable in companies with certain shareholders due to the ownership of certain individuals and the multiplicity of partners (Mohagheghdamad, 1986, p. 19). Therefore, if the owner or the co-owner of the apartment is a legal entity, its legal representative (for example, the managing director) can exercise the right of pre-emption. however, in cases where the joint property is divisible between two persons and one of the partners passes away with and the property is conveyed through inheritance, the multiplicity of partners would result in the right of pre-emption being inapplicable, but if the trading occurs during the lifetime of the owner having the right of pre-emption, the right would be reversed for the heir after his/her death, and the multiplicity of the heir won't undermine the right of pre-emption, because the condition for the limited number of partners is related to when the right of pre-emption is being shaped and not when it is sought to be exercised (Katouzian, 2011, p.19).

6.3. Sale of Parts of the Apartment Such as Parking Spaces or Storage Rooms

One of the conditions stated by a plethora of studies for the right of pre-emption is that the partner must sell his entire share for the right of pre-emption to be applicable for the other partner (Mohagheghdamad, 1986, p. 19), and the exceptionality of the right of pre-emption have been deemed evidence thereto (Asghari, 2006, p. 49). Yet, given the logic behind the right of pre-emption, which is to prevent the possible harm from the new partnership for the other partner, and considering the impossibility of exercising the right of pre-emption in the sale of a part of one's share, this harm would still exist. The interpretation of the term share in Article 808 of the Civil Code does not seem to be referred to the whole share. Therefore, this view is approved by various jurists (Najafi, 1983, p. 272) and scholars of raw (Katozian, 2011, p. 232). According to Article 1 of the Executive Regulations of the Apartment Ownership Law, various parts of the building are traditionally allocated for the exclusive use of the partner (apartment owner); Therefore, storage rooms and parking spaces belonging to each flat are considered as exclusive parts. In cases where the apartment owner intends to sell his apartment flat with the parking space and storage rooms, the other partner may want to exercise the right of pre-emption to purchase the parking lot or storage separately. Regardless of the provisions regarding the sale of a storage room or parking lot, Article 815 of the Civil Code implies that this right is not current for the partner because the right of pre-emption cannot be applied to only a part of the sale and the person with the assumed right of pre-emption must either ignore buying or seek to buy the whole share (that is, along with flat). Nevertheless, another scenario is that the apartment and parking lot are sold in the form of two separate contracts. here, because two separate contracts are being concluded, the requirements for exercising the right of pre-emption on either of the properties are not hindered (Katozian, 2011, p. 58), The right to pre-emption can be considered for both the parking space or the storage. Yet, special rules governing apartment buildings might prove to be an obstacle. Clause 16 of the instructions for separating apartments, which was announced by the Property and Deeds Registration Organization on 11th august 2003, stipulates that, in the separation report, it should be specified that the storage and parking must be transferred together with the apartment, and the transfer of storage and parking to individuals other than the owners of the apartment flat and the joint conveyance of parking to the owners of two flats or more are not permitted. Moreover, the conveyance of two or more parking spaces to the owner(s) of a single apartment (so that the owner or owners of one apartment would have multiple parking spaces while the owner of another would lack any space) is not permitted. Therefore, in addition to the legal obstacles hindering the right of pre-emption for the sale of parking spaces or storage rooms, the sale of these components separately is also accompanied by other restrictions. The ban on the sale of parking spaces or storage rooms to individuals other than the apartment owners is owing to the fact that there are many shared areas in apartment complexes that are jointly owned by all owners in proportion to their share of private ownership. Yet, if parking spaces or storage rooms are sold to someone other than the apartment owners, the new buyer needs to use these shared spaces belonging to all the owners to use his/her parking space or storage room, while the registration office is prohibited from registering such dealings (Taghi Lou, 2005, p. 70). It should be further noted that urban regulations require that each apartment flat have independent parking and storage, and the separate sale of these components causes incomplete apartment flats and confusion and difficulty of living in the aforementioned residences. Therefore, notaries only allow the transfer of parking and storage to the owners of apartments in the same building (Azarpour & Ashrafi, 1996, p. 58).

6.4. Sale of a Shared Portion of a Partner's Property

Given the aforementioned grounds, if the conditions for the right of pre-emption are met and one of the partners intends to sell only a part of his/her property to a third party, Article 815 of the Civil Code provides that another partner can exercise the right of pre-emption

for the said share. It would be abundantly clear that the ownership of the person seeking to exercise the right requires the payment of the price, and Article 808 of the Civil Code indicates the precedence of payment of the price before the sale of the property, hence requiring the owner to pay the price because the philosophy of right pre-emption and its exceptional state and urgency of exercising the right and prevention of delays that would otherwise cause harm to the buyer and seller all to confirm the precedence of payment of the price by person seeking to exercise the right of pre-emption, although there are opposing views among the jurists who suggest a non-precedence of payment of the price (Katozian, 2011, p. 75).

7. EXTRACTS FROM LAWSUITS ON THE RIGHT OF PRE-EMPTION IN APARTMENTS

a. As mentioned in Article 808 of the Civil Code, the immovable property subject to this article must be divisible, and in the event of a dispute, an expert opinion must be obtained.

B. right of pre-emption must not have already been revoked. In some cases, due to differences between the shared partners of a property, the parties, through arrangements or compromises in judicial or administrative authorities, waive their right of pre-emption, and therefore their subsequent invocation of the exercise of this right is legally unjustifiable (Entesar, 1990).

J. Although the context of Article 808 of the Civil Code indicates that a person seeking to exercise the right must first pay the price to the customer and then demand ownership based on the right of pre-emption, but it seems that the initial payment to the customer is applicable where there is no dispute between the partners regarding the applicability of the right of pre-emption, and the person exercising the right would want to take possession of the share of the sale only by exercising his/her will, in other words, the applicability of the right of pre-emption is undisputed. Therefore, in cases where there is a dispute between the partners in the applicability of the right of pre-emption, it seems that the seller cannot rely on the lack of payment of the price by the partner to reject the right of pre-emption (Bashiri, 2012, p. 58).

In this regard, it is desirable to refer to the legal standing of Article 48 of the Registration Law[10] and Article 62 of the Law on Permanent Provisions of the Country Development Plans[11], approved in 2017, to explain the judicial procedure and decisions of court judges.

In this regard, the verdict issued on January 6, 2015, by the Second Branch of the General Court of Law of Varamin properly presents the judicial procedure here:

"Regarding the petition of A. B. represented by B.J. and A. A. versus M. B. at the request of the plaintiff to prove ownership of the share of partnership subject of the contract dated 16.3.1991, including movable and immovable, and the resulting financial rights amounting to fifty-one million rials, taking into account all court damages such as court fees and attorneys' fees, as evidence by the transcript of the contract dated 16.3.1991, with the explanation that the plaintiff's lawyer has announced that the client signed a partnership contract with the defendant on 16.3.1991 have acknowledged the parties entered a failing partnership, in which the plaintiff has paid the amount of sixteen million and two hundred and eighty-nine thousand Rials and participated in the contract, while the defendant also shared a shop with registration plate 178.3 belonging to the defendant and one million Rials and participated in the contract. Owing to the joint ownership of the partners in relation to the shared property and considering that the defendant does not provide a receipt on the ownership of the shared property in the amount of the share of the partnership, the defendant has requested the release of the subject. According to Articles 22, 24, 47, and 48 of the State Property and Deeds Registration Law, the court recognizes only the person whose name is registered as the owner in the real estate office, as merely approving and enforcing the contract and declaring its validity does not create ownership. The unified judicial precedent of Procedure No. 27/70 of the General Assembly of the Supreme Court and also the unified judicial precedent of Procedure confirms this view. Therefore, the claim for proof of ownership in the property with a registered record cannot be heard according to the above-mentioned regulations. On the other hand, according to Article 223 of the Civil Code, the contracts are assumed valid by default and in case of a contract, individuals can demand the requirements and rights arising from it according to the law, and in case of refusal of the obligor, they can request and request his/her commitment from the competent authorities. According to the above arguments, the court does not recognize the plaintiff as plausible and, according to Article 2 of the Code of Civil Procedure, issues and announces the rejection of the lawsuit. The verdict issued in person can be appealed in the court of appeal of Tehran province within twenty days after notification."

This assumption also prevailed in the Court of Appeal: "Branch 28 of the Court of Appeals of Tehran Province. The decision of the Court of Appeals regarding the appeal of M.A. represented by of N. B. versus (1) M. Kh., (2) M. Kh., (3) L. Kh., (4) N. Kh. (4), (5) F. R., Regarding the lawsuit 920338-92 / 5/28 (which is correct from 93073-93 /2/14) issued by Branch 219 of the General Court of Law of Tehran, which includes the issuance of a ruling to ratify the ordinary affidavit of 85/9/6 in relation to 3 sixth shares from the entirety of the property with registration no …. in section 10 of Tehran and according to the lawsuit 930073-93 /2/14, the plaintiff appeal was rejected. However, given the contents of the case and the grounds of the appeal, and since in the case of a property with a registered

record, the enforcement of the affidavit constitutes proof of ownership of the registration plate, which is contrary to the provisions of Articles 46 and 48 of the Registration Law. Nevertheless, according to the above-mentioned article, a document must be registered in accordance with the above articles, yet the legal formalities for registering the dealing are observed in the aforementioned form cannot be accepted in the courts of law. Therefore, the appealed lawsuit, which was issued against this basis, cannot be approved. This court issues a decision rejecting the claim of the primary claimants based on Articles 2 and 358 of the Code of Civil Procedure and announces that this verdict is final.

Therefore, no discrepancies are observed in these two articles (Safaei, 1976)

In filings lawsuits on the right of pre-emption, it is necessary to be filed on behalf of both the buyer and the partner, and the lawsuit against the buyer alone cannot be heard (Katouzian, 2011, p. 508). Because the seller is not an alien in this dispute, because firstly, one of the conditions for creating the right of pre-emption is the conveyance of ownership of another co-owner through a contract of sale, which the person seeking to exercise the right must first prove (against its contractors) and secondly, provide the possible defense against the claim, the verdict on which would grant him the consequences otherwise imposing on the seller coercively (Amid, 1997).

8. CONCLUSION

Today, apartment buildings are rapidly becoming the most prevalent way of responding to the need of people of residence. As such, regulating the relations of apartment owners and removing legal barriers, and adapting new issues to jurisprudential and legal principles are among the most significant duties of the legal community. Exercising the right of pre-emption, which is known as a coercive legal ownership right, is an exceptional privilege granted to the partner by law based on alterum non laedere and to protect the interests of the partner, for which, there is consensus that a narrow interpretation must be employed. Joint ownership of immovable property and its passage and waterway in Imami jurisprudence is one of the factors in the emergence of the right of pre-emption. In popular jurisprudence, in addition to the two aforementioned factors, the proximity of the two properties (i.e., being neighborhood) is another ground for the realization of the right of pre-emption. According to Article 808 of the civil law, special conditions have been considered for the applicability of the right of pre-emption, namely the immovability of the property, divisibility of the property, Limitation of several joint owners to two people, conveyance of transfer through sale, and urgency of the application of the right of pre-emption, among others. There are different opinions regarding the special condition of the apartments in terms of physical form, location, and multiplicity of owners and partners, and the special laws and regulations governing it. Some scholars argue that owing to the aforementioned discussion, it is not possible to exercise the right of pre-emption in dealings related to apartments. However, according to the study and analysis of possible causes, it can be concluded that, overall, apartment buildings are not inherently different from other buildings in the applicability of the law, but the existence of private and joint premises and joint ownership of the land has made the interpretation further restrictive. Now, if the conditions mentioned in Articles 808 to 824 are applicable to apartment buildings (especially if there are only two partners involved), the possibility of which is very high in such scenarios, the applicability of the right of pre-emption is conceivable. Regarding other parts of the apartment, such as parking spaces and storage rooms, despite the restrictions that apartment owners have in selling these parts to non-owners of the buildings, but in the sale of storage or parking belonging to apartment flats, realizing the legal requirements for employing the right of pre-emption is highly perceivable. There are also instances of verdicts ruling the acceptance of the right of pre-emption in apartment flats.

END NOTE

1. Adl "Mansour Al-Saltanah", M. (1963). Civil Law, Amirkabir Publications, p. 505.
2. Emami, S. H. (1970). Civil Law, Islamic Bookstore Publications, Third Edition, p. 9.
3. For more information, refer to: Sheikh Tusi, Al-Mabsut, vol. 3, p. 120; Allama Helli, Rules of Rulings, vol. 1, p. 210; Mohaqeq Helli, Sharia of Islam, vol. 3, p. 253; Sheikh Mohammad Hassan Najafi, ibid., vol. 37, p. 257; Sayyid Muhammad Jawad Husseini Amoli, Miftah Al-Keramah fi Sharh al-Ghaveaed Al-Allameh, Al-Bayt Institute Publications, Vol. 6, pp. 325 and 326.
4. Adl "Mansour Al-Saltanah", M. (1963). Civil Law, Amirkabir Publications, p. 506.
5. Katouzian, Nasser, Civil Law, Unilateral Legal Acts (general theory, specific legal acts), pp. 227-228, No. 131.
6. Sheikh Yusuf Bahrani, ibid. vol. 20, p. 299.
7. Katouzian, Nasser, Civil Law, Unilateral Legal Acts (general theory, specific legal acts), pp. 227-228, No. 132.
8. Adl "Mansour Al-Saltanah", M. (1963). Civil Law, Amirkabir Publications, p. 506.
9. Payam Semnan Newspaper 7.11.2012: In apartments where the building is sold without land (of course with the right to share with the land below) and pursuant to the Article 809 of the Civil Code, Considering that in apartments, in spite of the law and regulations related to the ownership of common property, the ownership of each apartment in the common land has a special status, for example, under the title of survival of the same apartment in a common share land, and not otherwise, and given that each apartment has only the right of shared use of the land under the apartment and does not have private ownership, it can be explicitly stated that according to the civil law and the regulations related to the ownership of apartments, the exercise of the right of pre-emption is not conceivable and enforceable under any circumstances.
10. A document that must be registered in accordance with the law and has not been registered as such will not be accepted in any of the offices and courts.
11. All dealing related to registered immovable property, such as sale, settlement, rent, mortgage, as well as the promise or commitment to perform such transactions, must be formally registered in the notary public. Ordinary documents that are prepared in relation to real estate transactions, except for documents that have a legal validity at the discretion of the court, are inviolable against third parties and do not have the ability to oppose official documents.

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