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INVESTOR'S LIABILITY FOR THE LEGAL AND FACTUAL SUITABILITY OF AN APARTMENT UNDER CONSTRUCTION

ABSTRACT: The subject matter of this paper is an analysis of the investor's liability to ensure that an apartment under construction constitutes, at the moment of delivery and legal transfer, a legally and factually suitable object of acquisition. The aim of the paper is to determine whether the investor's liability towards the buyer may be understood solely within the framework of the traditional sale of property and the general rules of contractual liability, or whether it represents a more complex form of liability arising at the intersection of public-law requirements governing construction, contractual relationships established during the construction process, and the marketability of the final object of acquisition. The paper is theoretical in nature and is based on normative, doctrinal, analytical, and systemic methods, accompanied by an analysis of relevant domestic legal scholarly literature and applicable legal sources.

The principal hypothesis of the paper is that the investor's liability for the legal and factual suitability of an apartment under construction does not constitute a separate and autonomous legal institution, but rather a specific form of complex contractual and transactional liability, within which the existing rules of public law, the law of obligations, and property

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law are applied subject to certain specific features arising from the multi-stage nature of a construction undertaking. The results of the analysis demonstrate that the investor's liability towards the buyer is not formed only at the moment of sale, but considerably earlier, through the planning, permitting, design, supervisory, and execution phases of the construction process. Consequently, the content of such liability cannot be adequately explained if the investor is viewed merely as a seller or merely as the employer of works under the construction contract.

Keywords: *investor, apartment under construction, legal suitability, factual suitability, construction contract, investor's liability, transfer of immovable property.*

1. Introduction

The contemporary legal and market position of the investor no longer permits simplistic definitions. An investor is not merely a person who provides capital, nor merely a party who concludes a contract with a contractor, nor solely the person who ultimately sells individual units within a building. The investor's position is multi-layered because it encompasses a series of successive yet interconnected legal and factual activities: from the decision to invest and the relationship with planning instruments, through the acquisition of conditions and permits, to design, organization of supervision, selection of contractors, monitoring of the construction process, and, finally, entering into a transactional relationship with the buyer. This complexity gives rise to the central issue examined in this paper: whether the investor's liability towards the buyer of an apartment under construction can be understood merely as a seller's liability arising from a real estate sale contract, or whether it constitutes a form of liability whose content is determined by the entire preceding course of the project. The legal significance of this issue does not stem solely from the theoretical need to define the investor's position more precisely. Rather, it derives even more from the very nature of the contemporary construction market. A buyer of an apartment under construction does not enter into a legal relationship with a person transferring an already existing and legally secure object of sale, but with a person who promises the result of a process that is either still ongoing or has only recently been completed. In such a relationship, the purchaser inevitably places a certain degree of trust in the investor. For precisely this reason, the investor's liability towards the buyer cannot be adequately explained if it is examined only from the moment of

concluding a preliminary agreement or a contract of sale. Such an approach would be overly narrow and would disregard the legal reality that an apartment under construction is not an ordinary object of legal transactions but rather the outcome of a multi-stage process. The final agreement concluded between the investor and the buyer represents merely the concluding manifestation of a series of prior legal relationships that give substance to that agreement. If those preceding relationships are deficient, legally uncertain, or factually mismanaged, their consequences will most often ultimately emerge in the relationship between the investor and the buyer.

Domestic legal scholarship confirms this conclusion from a variety of perspectives. The importance of planning certainty and spatial regulation for investors has been emphasized in works addressing the relationship between investors and spatial planning, demonstrating that investment security depends upon clear parameters concerning what may be built, where construction is permitted, within what timeframes approvals may be obtained, and how the process ultimately leads to documentation enabling secure legal transactions (Arsić, 2007, pp. 870–880). Investor protection cannot be reduced merely to the existence of legal rules; it also depends upon their quality, transparency, and predictability, as highlighted in the literature on law and investor protection (Vasiljević, 2007, pp. 3–20). At the permitting stage, studies concerning the specific features of the building permit procedure demonstrate that this phase often generates difficulties that may later acquire significantly broader implications (Vučetić, 2013, pp. 325–343).

Within the sphere of contract law, references addressing the contractual liability of designers, the general basis of contractual liability, supervision and the liability of employers, termination of construction contracts, and disputes arising from such contracts all demonstrate, in their respective ways, that a construction project constitutes a legal network in which risks cannot easily be isolated and assigned to a single participant (Jovanović D., 2020, pp. 318–334; Jovanović N., 2020, pp. 40–63; Paunović, 2019, pp. 182–202; Paunović, 2024, pp. 155–173; Mišković, 2017, pp. 107–117; Đorđević, 2023, pp. 89–103). Finally, the literature concerning the concurrence of contractual and non-contractual liability raises an additional question as to whether the investor's liability towards the purchaser is always exhausted within a purely contractual framework or whether, in certain situations, it acquires a broader compensatory dimension (Dudaš, 2022, pp. 795–812).

The subject matter of this research is the analysis of the investor's liability for the legal and factual suitability of an apartment under construction, with particular emphasis on the manner in which the planning, permitting, design,

supervision, and construction phases affect the purchaser's ultimate legal position. The term factual suitability is not used as a normative concept in the positive law of the Republic of Serbia. In this paper, it is employed as a theoretical notion denoting the technical and functional suitability of an apartment for its intended contractual and ordinary use, that is, the set of characteristics corresponding to the design and technical documentation, the contractual specifications, and the legitimate expectations of the purchaser.

The aim of the paper is to determine whether the investor's liability towards the buyer of an apartment under construction may be explained solely through the rules governing traditional contracts of sale and the general principles of contractual liability, or whether it represents a more complex form of liability arising at the intersection of public-law requirements governing construction, contractual relationships established during the construction process, and the marketability of the final object of acquisition.

The principal hypothesis of the paper is that the investor's liability for the legal and factual suitability of an apartment under construction does not constitute a separate and autonomous legal institution, but rather a specific form of complex contractual and transactional liability within which the existing rules of public law, the law of obligations, and property law are applied subject to certain specific features arising from the multi-stage nature of a construction undertaking. The methodological framework of the paper is based on normative, doctrinal, analytical, and systemic methods, accompanied by an analysis of relevant domestic legal scholarship and applicable legal sources.

2. The Concept of the Central Legal Institute and Its Emergence in the Contemporary Legal and Social Context

Defining the investor's liability for the legal and factual suitability of an apartment under construction is not a straightforward task, primarily because the law does not recognize this notion as a fully developed statutory institution. Positive law contains separate rules governing planning and construction, the contractual relationship between the investor and the buyer, real estate transactions, and the registration of rights in the real estate cadastre.

For the purposes of this paper, the investor's liability for the legal and factual suitability of an apartment under construction should be understood as the aggregate of the investor's obligations and risks vis-à-vis the buyer concerning the requirement that the object of acquisition be, on the one hand, legally secure and suitable for legal transactions and the registration

of rights, and, on the other hand, factually usable and consistent with both the contractual specifications and the characteristics that may reasonably be expected. Legal suitability implies that the apartment or other individual unit of the building rests upon properly obtained and legally valid construction documentation and that, on this basis, it may lawfully serve as the subject of a sale and other legal transactions between the investor and the buyer. Factual suitability implies that what is delivered to the purchaser corresponds to its intended purpose, satisfies technical and functional expectations, and conforms to the content agreed upon by the parties.

At this point, a distinction must be drawn between this concept and several related notions. This legal institution is not synonymous with the investor's general liability. The investor's general liability encompasses obligations towards administrative authorities, contractors, designers, co-owners of land, and even the public interest. The central institut examined in this paper is narrower, as it concerns the investor's ultimate relationship with the buyer of an apartment under construction. Likewise, it is not identical to the contractor's liability. The contractor is the direct performer of the construction works, whereas the investor acts as the organizer, project sponsor, and the person who ultimately assumes responsibility for the outcome vis-à-vis the buyer. Nor is the concept equivalent to the traditional seller's liability for legal and material defects. In the case of the sale of an already existing immovable property, attention is focused primarily on the condition of the object at the time of the conclusion and performance of the contract. In the case of an apartment under construction, by contrast, the final defect or legal uncertainty is often the result of the entire preceding process. The emergence of this issue is closely connected with changes in the nature of construction projects and the real estate market. The modern investor typically does not build solely for personal needs but organizes an entire undertaking for the purpose of placing residential units on the market. Consequently, the buyer no longer enters into a relationship with a passive seller of an already existing asset but with a person who has previously managed a complex series of legal and technical processes. For this reason, buyers expect more from investors than the mere delivery of the property and transfer of title. They reasonably expect a legally secure and factually satisfactory result of the entire undertaking.

A further reason why this concept has become increasingly important lies in the growing complexity of construction projects. Planning instruments, location conditions, building permits, technical documentation, professional supervision, various contractual models for the execution of works, technical inspections, transactional formalities, and the registration of rights can no

longer be viewed as simple and isolated stages of a single process. They overlap, interact, and generate consequences for one another. Consequently, the investor's liability towards the buyer is not the "final" stage of the process but rather the cumulative legal expression of everything that has preceded it. The legal literature confirms this conclusion. Arsić (2007) emphasizes planning certainty and ownership documentation as essential foundations of both investment security and transactional certainty (pp. 870–880). Vasiljević further argues that investor protection depends on the quality of the normative framework and its practical implementation (Vasiljević, 2007, pp. 3–20), while Vučetić demonstrates that the permitting phase frequently becomes the source of difficulties that later manifest themselves in broader legal problems (Vučetić, 2013, pp. 325–343). Within this process, design, supervision, and construction relationships shape the internal allocation of risks, which is of particular importance for determining the investor's liability (Jovanović D., 2020, pp. 318–334; Paunović, 2019, pp. 182–202; Vujačić, 2022, pp. 1469–1472). Finally, the possibility of contract termination and the occurrence of disputes further destabilize projects, making the entire process more uncertain and complex (Mišković, 2017, pp. 107–117; Đorđević, 2023, pp. 89–103).

The critical legal analyses offered by these authors demonstrate that the concept of the investor's liability for the legal and factual suitability of an apartment under construction is not an artificial theoretical construct. Rather, it represents a theoretical response to a practical reality that has long been present in contemporary construction and real estate transactions.

3. Legal Nature of the Central Institut

The question of the legal nature of this form of liability constitutes the central theoretical issue of this paper. The fundamental dilemma is whether this liability should be regarded as a distinct legal institut or merely as a particular manifestation of already existing legal relationships and grounds of liability. At first glance, there appear to be compelling reasons to emphasize its distinctiveness. The investor's liability towards the buyer of an apartment under construction extends beyond the ordinary obligation to deliver a thing. It encompasses the outcome of the planning, permitting, design, supervision, and construction phases of the project. From a practical perspective, the purchaser acquires not merely an apartment, but also the legal and factual reliability of the entire preceding process.

Nevertheless, the stronger argument is that this does not constitute an autonomous legal institution but rather a specific form of complex liability

operating within the existing legal system. Its foundation remains firmly rooted in the established rules of public law, the law of obligations, and property law. Accordingly, the central issue is not the absence of legal norms, but rather the manner in which those norms are interconnected. The Law on Planning and Construction (2009) regulates the possibility and conditions of construction, while the Law of Obligations (1978) regulates contractual relationships and the consequences of their breach. Regulations governing real estate transactions address the transactional dimension, whereas the cadastral regime governs registration and the security of legal transactions.

What makes this form of liability distinctive is not the creation of a new normative framework but rather the necessity of interpreting existing legal rules in an integrated manner rather than in isolation. This conclusion gains additional significance when viewed through the general framework of contractual liability. If contractual liability is fundamentally based upon the breach of a contractual obligation (Jovanović N., 2020, pp. 40–63), then the investor's liability towards the buyer is, in its immediate legal form, primarily contractual. The buyer and the investor are parties to a contractual relationship, and any analysis must therefore begin with the examination of the obligations undertaken by the investor and any breach thereof.

However, this starting point is insufficient to exhaust the entire content of the issue. The investor's contractual obligation towards the purchaser differs significantly from the obligation of a typical seller of an already existing and legally finalized immovable property. It necessarily incorporates the results of the preceding construction process. Consequently, contractual liability in this context emerges in a considerably more complex form.

A similar conclusion may be drawn from D. Jovanović's (2020) analysis of the obligations of designers and consulting engineers. Although these obligations are specific to construction projects, they nevertheless remain within the general framework of contractual liability (2020, pp. 318–334). This observation gives rise to an important analogy. The specific nature of a construction project does not automatically justify the creation of a new legal institution. Rather, it requires a more precise and intensive application of existing legal principles. Accordingly, although the investor's liability towards the buyer is highly specific in practical terms, it must still be interpreted within the framework of the existing legal system.

This does not mean, however, that the specific nature of the problem should be disregarded. Its distinctiveness is real, but not institutional. It is functional and systemic rather than constitutive. From the buyer's perspective, the investor serves as the person upon whom the consequences of the project's

internal relationships ultimately converge. As a rule, the buyer does not contract with the designer, the supervising engineer, or the contractor. The buyer contracts with the investor. Consequently, the investor is liable not only for the immediate legal transaction concluded with the purchaser but also for the legal consequences of activities that the investor previously organized, initiated, supervised, or failed to supervise.

The theoretical conclusion is therefore that the investor's liability for the legal and factual suitability of an apartment under construction constitutes a particular form of complex contractual and transactional liability, but not an autonomous legal institution. Its specific features are not sufficient to justify its recognition as a new legal category, yet they are sufficiently significant to require a more integrated interpretation of existing legal rules.

4. Fundamental Legal Issues

4.1. Public-Law Preconditions for Construction as the Initial Segment of Investor Liability

The first fundamental legal issue concerns whether the investor's liability towards the buyer can be separated from the public-law preconditions governing construction. The very subject matter of the Law on Planning and Construction (2009) demonstrates that the answer must be in the negative. This statute regulates the conditions and manner of spatial planning, construction land, the erection of buildings, the exercise of supervision, and other matters of significance for construction activities. Moreover, the legislative framework remains subject to continuous modification, as evidenced by the amendments adopted in 2025. This is not merely an abstract normative circumstance, it carries direct practical implications. Arsić (2007) correctly observes that, from the investor's perspective, it is of decisive importance that there exist clear parameters concerning what may be built, where construction is permissible, within which timeframes approvals may be obtained, and how ownership documentation is ultimately secured so as to enable legally certain real estate transactions (pp. 870–880). Consequently, the investor's position does not begin with the contract concluded with the buyer. Rather, it begins with the public-law framework that determines whether the project itself is legally viable.

Vasiljević (2007) develops this conclusion further by emphasizing that investor protection depends not only on the existence of legal norms but also on the quality, transparency, and predictability of the regulatory system (pp. 3–20). Public-law certainty is therefore important not only for the investor as

the party undertaking the investment but also for the buyer as the future acquirer of the property. If the public-law framework is normatively deficient, unclear, or inconsistently applied, the final object of the transaction inevitably becomes burdened with a higher degree of legal uncertainty. Vučetić's analysis of the building permit procedure is particularly significant because it demonstrates that the permitting phase is neither neutral nor purely technical. Difficulties arising during this stage, as well as broader issues concerning the quality of planning instruments and the relationship between legal and technical requirements, do not necessarily remain confined to the sphere of administrative law (Vučetić, 2013, pp. 325–343). On the contrary, problems emerging at this stage may subsequently manifest themselves as delays, inconsistencies between planned and completed construction, legal uncertainty in transactions, or obstacles to the registration of the buyer's rights. More recent institutional analyses of permitting systems likewise confirm that, although the regulatory framework is relatively detailed, its effectiveness continues to depend substantially upon administrative practice and institutional performance.

A further important observation must be made. In practice, it is often incorrectly assumed that public-law preconditions concern only the relationship between the investor and public authorities, while the buyer remains entirely outside that relationship. From a formal legal perspective, this assumption is correct. From a substantive perspective, however, the buyer ultimately bears the consequences of the success or failure of that relationship. If the planning basis is unclear, if permits are delayed, if difficulties arise in harmonizing documentation, or if deviations emerge during implementation that undermine the legal stability of the project, the buyer will inevitably experience the consequences, despite not being a party to those legal relationships. The buyer's legal interest therefore begins much earlier than might initially appear.

The partial conclusion of this section is that the public-law preconditions for construction are not merely preliminary requirements for the investor's activities. Rather, they constitute the initial component of the investor's subsequent liability towards the buyer.

4.2. Design, Supervision, and the Internal Structure of Liability

The second fundamental legal issue concerns the internal structure of relationships within a construction project and the question of whether the investor may remain "neutral" vis-à-vis deficiencies attributable to designers, supervising engineers, and contractors. The point of departure is once again the

Law of Obligations, which governs legal relationships arising from contracts, damages, and other legally relevant facts. Design activities, professional supervision, the execution of construction works, and the interaction among these activities, notwithstanding their technical specificity, are first and foremost relationships governed by the law of obligations.

Jovanović D. (2020) demonstrates that neither the design contract nor the supervision contract is specifically regulated by the Law of Obligations. Consequently, the content of these relationships and the liability arising from them must be derived from general legal principles, the nature of the services involved, and the specific contractual arrangements concluded by the parties (pp. 318–334). This issue is of particular importance for the investor. If the content of obligations is largely left to contractual autonomy, then the investor actively determines the allocation of risks already at the stage of contract formation. Poorly defined obligations, imprecise standards of control, and unclear distributions of professional responsibility may later emerge as problems that can no longer be confined to the investor's relationships with designers or supervising engineers. Paunović's (2019) analysis of construction supervision further reinforces this point. Where the legal framework governing supervision lacks sufficient clarity, there is a genuine risk that technical and factual irregularities will not be identified and remedied in a timely manner (pp. 182–202). In his subsequent work on the liability of employers in construction projects, Paunović goes a step further, demonstrating that an employer cannot simply evade responsibility by invoking the involvement of other engaged professionals (Paunović, 2024, pp. 155–173). This observation is directly relevant to the present subject. In the internal dimension of the project, the investor may possess rights of recourse and claims against other participants. In the external dimension, however, the investor remains the central figure vis-à-vis the buyer. Vujačić's (2022) contribution, although situated within a somewhat different disciplinary framework, is likewise important because it demonstrates that the type of contract employed influences the manner in which the project is managed and, consequently, the allocation of risks within it (pp. 1469–1472). The investor's challenge therefore lies not merely in complying with formally prescribed legal requirements but also in effectively organizing the project, establishing appropriate control mechanisms, and managing complex legal and factual relationships.

At this point, an important practical reality becomes apparent. The buyer does not select the designer. The buyer does not appoint the supervising engineer. Nor does the buyer contract with the contractor. All of these relationships exist "behind" the investor from the buyer's perspective. For

this reason, the investor's liability towards the buyer cannot be equated with that of a conventional seller delivering a contractual object of sale. Rather, the investor is also responsible for the functional outcome of the internal network of contractual and organizational relationships that the investor has established and managed. Consequently, the investor cannot escape liability merely by invoking the autonomy of those professional actors. Their autonomy undoubtedly exists within the internal structure of the project, but it does not negate the fact that the investor created that structure and presented it to the buyer as a coherent and reliable undertaking.

The partial conclusion of this section is that the investor's liability towards the buyer cannot be properly understood without first understanding the investor's contractual and organizational position vis-à-vis the designer, supervising engineer, and contractor. Although the purchaser does not participate in these internal relationships, it is often the purchaser who ultimately bears their consequences.

4.3. The Construction Contract as a Source of Subsequent Transactional Uncertainty

The third fundamental legal issue concerns the construction contract and the manner in which its formation, performance, and potential disruptions affect the subsequent relationship between the investor and the buyer. In practice, the construction contract is often viewed primarily as an internal instrument for the implementation of a project. Such an understanding, however, is incomplete. A construction contract is not merely a technical framework for the execution of works, it also constitutes the legal foundation upon which the realization of the entire project rests.

Grujić (2023) demonstrates that legal complexity arises already at the stage of concluding a construction contract, particularly where competitive tendering procedures are employed (pp. 601–628). This means that the investor's risk does not begin only when construction works commence, but also at the stage of selecting the contracting model, determining the criteria for choosing contractual partners, and allocating initial responsibilities. In this respect, the investor is not merely a passive employer of works but a party that actively constructs the fundamental legal relationship upon which the future course of the project will depend. Đorđević (2023) shows that disputes arising from construction contracts are an almost inevitable feature of construction practice (pp. 89–103). This observation is particularly significant for the present analysis because it demonstrates that deficiencies in the construction contract

do not remain merely an “internal problem” of project implementation. Once the contractual relationship becomes destabilized—whether through disputes, delays, disagreements concerning quality, or other forms of disruption—the consequences frequently extend beyond the investor–contractor relationship and directly affect the buyer.

Mišković (2017) further explains that termination of a construction contract is neither a typical nor a simple remedy and that its consequences cannot readily be reduced to the general model of restitution following contract termination (pp. 107–117). This is important because the investor cannot successfully defend his position vis-à-vis the buyer merely by asserting that a dispute has arisen with the contractor or that the construction contract has been terminated. From the purchaser’s perspective, the decisive issue is whether the object of acquisition is suitable and whether it will be delivered properly and within the agreed timeframe. Internal termination, disputes, or crises within the investor–contractor relationship do not alter the fact that the purchaser expects a result from the investor. In other words, although the construction contract is internal with respect to its parties, it is not internal with respect to its ultimate effects. Its success or failure directly influences whether the purchaser will receive a legally and factually suitable property. For this reason, the construction contract should be viewed as one of the most important indirect sources of the investor’s subsequent liability towards the buyer.

It is also important to recognize that construction contracts inherently contain a greater degree of uncertainty than many other contractual arrangements. The reason lies in the fact that their performance does not occur within a static environment. During construction, changes arise, additional works become necessary, technical adjustments are made, questions regarding deadlines emerge, difficulties in the supply of materials occur, and regulatory or market circumstances may change. Consequently, construction contracts naturally generate a heightened risk of disruption. What is most important for the purposes of this paper, however, is that this increased risk does not remain confined to the investor–contractor relationship. Ultimately, it becomes a risk borne by the buyer. The buyer may have had no involvement whatsoever in the contractual arrangements between the investor and the contractor, yet the consequences of deficiencies in those arrangements frequently materialize in the purchaser’s legal and factual position.

The partial conclusion of this section is that the construction contract is not merely an internal technical and legal relationship between the investor and the contractor. Rather, it constitutes one of the principal sources of subsequent

transactional certainty or uncertainty. Accordingly, the consequences of disruptions affecting the construction contract cannot be examined in isolation from the position of the buyer.

4.4. Real Estate Transactions, Registration of Rights, and the Legal Suitability of the Object of Acquisition

The fourth legal issue concerns the very concept of legally secure real estate transactions. The Law on Real Estate Transaction proceeds from the principle that the transfer of immovable property is free unless otherwise provided by law, while the Law on the Procedure for Registration in the Real Estate Cadastre and Infrastructure Cadastre (2018) expressly defines the objective of the registration procedure as ensuring accurate and comprehensive records in the interest of legal certainty in transactions. Taken together, these legislative premises demonstrate that real estate transactions are not merely a matter of formally concluding a contract, but they also depend upon the legal condition of the object of acquisition placed on the market.

This issue is particularly significant in the context of apartments under construction. The purchaser acquires not merely a future object in an economic sense, but the future outcome of a legally organized process. If the object of acquisition has been physically constructed but is not suitable for secure legal transactions or proper registration of rights, the investor's obligation towards the buyer cannot be regarded as fully performed. It is precisely at this point that the traditional seller's liability expands and becomes liability for the outcome of the entire preceding project.

Arsić's (2007) thesis concerning ownership documentation as a foundation of transactional security acquires its full significance in this context (pp. 870–880). If the object of acquisition is not legally structured in such a manner that the buyer can securely acquire and register the relevant rights, the buyer's contractual expectations have not been fully satisfied. Likewise, if the object has been formally delivered but remains legally uncertain or factually unusable, it cannot reasonably be maintained that the investor has fulfilled what the buyer was entitled to expect under the contract.

This analysis also reveals the close relationship between legal and factual suitability. Legal suitability is not merely a matter of permits, official records, and documentation, but it is also a matter of the actual ability of the acquired object of acquisition to function as a legally secure object of rights. Factual suitability, on the other hand, is not merely a technical issue concerning construction quality. It is equally a question of whether the apartment under

construction corresponds to what was contractually promised. In the context of object of acquisition under construction, these two dimensions cannot be strictly separated.

A further observation should be made. Legal certainty in this area is not exhausted by the formal possibility of concluding a contract or by the existence of documentation suitable for registration. Genuine transactional security exists only where the purchaser may reasonably expect that the object of acquisition will correspond, both legally and factually, to what was represented during the transaction. If a contract exists but performance is seriously compromised in practical terms, legal certainty remains incomplete. Conversely, if the apartment is technically usable but legally questionable in a significant respect, full suitability likewise cannot be said to exist. For this reason, an excessively formalistic understanding of the investor's obligation must be rejected. The investor's duty is not exhausted by merely transferring whatever rights happen to exist. In the context of apartments under construction, the investor is not a simple transferor of rights but rather the person responsible for creating the conditions under which the object being transferred becomes a legally secure and factually reliable result of the entire preceding project.

The partial conclusion of this section is that the legal suitability of an apartment under construction encompasses considerably more than the mere contractual act of delivery. It presupposes a legal and factual condition that enables secure transactions, proper registration of rights, and the effective enjoyment of the rights acquired by the purchaser.

4.5. The Limits of the Investor's Contractual and Non-Contractual Liability

The fifth fundamental legal issue concerns whether the investor's liability towards the purchaser remains exclusively contractual in nature. The starting point for addressing this question is undoubtedly contractual liability. As a rule, the purchaser and the investor are parties to a contractual relationship, and any analysis must therefore begin with the breach of contractual obligations. In this regard, the general framework of contractual liability remains decisive (Jovanović N., 2020, pp. 40–63). However, Dudaš (2022) convincingly demonstrates that a single harmful event may give rise to both contractual and non-contractual grounds of liability (pp. 795–812). For the purposes of this paper, this observation is important not because every defect affecting an apartment under construction automatically gives rise to tortious

liability, but because the investor's liability should not be too readily confined within the narrow framework of defective contractual performance. Where the buyer's loss extends beyond the ordinary consequences of delayed or defective performance and affects the buyer's broader legal or factual position, it becomes legitimate to consider the possibility of a wider compensatory framework.

This issue becomes particularly relevant in cases involving serious legal or factual deficiencies. An apartment that cannot be securely registered, that substantially fails to correspond to the characteristics contractually promised, or whose legal status is seriously compromised may produce consequences that the purchaser experiences as something more than an ordinary contractual breach. For this reason, the question of the limits of the investor's liability should not be prematurely closed. At the same time, caution is required. It would be unjustified to infer non-contractual liability automatically from every breach of the investor's obligations. Such an approach would be excessively broad and legally imprecise. A more accurate position is that contractual liability constitutes the primary framework, while the multi-stage and complex nature of construction projects justifies a more nuanced and expansive understanding of the potential boundaries of that framework.

A particular reason for such caution lies in the fact that buyer in these relationships frequently suffer not only direct economic loss, but also losses associated with delay, organizational disruption, and the inability to use, enjoy, or dispose of the apartment in the manner originally contemplated. Some of these consequences can readily be accommodated within the traditional framework of contractual liability. Others occupy a more ambiguous position and illustrate that the investor's relationship with the purchaser is not entirely straightforward. For precisely this reason, it is useful to maintain a broader analytical perspective regarding the limits of the investor's liability. The complexity of the construction process, the multiplicity of legal relationships involved, and the variety of potential consequences for the purchaser all indicate that rigid categorizations may not always provide satisfactory solutions.

The partial conclusion of this section is that the investor's liability towards the buyer is primarily contractual in nature. Nevertheless, the specific characteristics of a construction undertaking may justify a broader understanding of both the foundations and the scope of that liability in certain circumstances.

5. Discussion

The analysis conducted in this paper demonstrates that the fundamental issue of investor liability is incorrectly framed when reduced solely to the question of whether the investor acts as the employer of construction works or as the seller of an apartment. Such a distinction may be practical and conceptually convenient, but it is insufficient from a legal perspective. The investor simultaneously occupies several roles: employer, organizer, initiator of the public-law processes necessary for construction, contractual party in relationships with professional participants involved in the project, and ultimately the person who assumes responsibility towards the purchaser for the outcome of the entire undertaking. For this reason, the investor's liability towards the buyer cannot be properly understood through a fragmented approach. If attention is focused exclusively on the transactional stage, one loses sight of the fact that the causes of the problem may have arisen much earlier, within the planning or permitting phases. If the analysis is confined to the construction contract, the ultimate position of the buyer—who has not participated in that internal relationship—is overlooked. Likewise, if the issue is viewed solely through the lens of legal or material defects, insufficient attention is paid to the reality that such defects often originate in a broader network of design, supervision, and organizational failures. The principal value of the analytical framework developed in this paper lies precisely in its ability to reconnect these different dimensions.

This observation also reveals the principal limitation of existing legal approaches. Positive law contains a sufficient number of rules to address the problem, but it does not present them in a unified form. The Law on Planning and Construction, the Law of Obligations, regulations governing real estate transactions, and cadastral legislation each regulate a specific aspect of the issue from their respective perspectives. The legal literature similarly illuminates individual segments of the problem: planning certainty, investor protection, permitting procedures, designer liability, supervision, contract termination, construction disputes, and the concurrence of different grounds of liability. What appears to be lacking is not necessarily a new legal rule, but rather a more integrated method of interpreting the existing legal framework. The most significant finding of this paper is therefore not that investor liability creates a new branch or category of law. On the contrary, the more persuasive conclusion is that it creates a need for a more integrated interpretation of the law that already exists. This also reveals the practical value of the topic. The buyer's position cannot be adequately protected if the investor is viewed

merely as a seller, nor can the investor's liability be properly assessed if the earlier phases of the project are ignored. The investor's liability towards the buyer is, in essence, liability for the outcome of the entire construction undertaking to the extent that this outcome ultimately materializes in legal and factual form in the buyer's position.

A further observation should be added. A more integrated reading of the law does not imply the erosion of distinctions between different branches of law. On the contrary, only a precise differentiation between public-law, contractual, and transactional elements makes it possible to understand how they interact in a particular case. Problems arise when these distinctions are treated as absolute and the investor's position is artificially confined to only one legal dimension. Such an approach obscures what is perhaps the most important characteristic of contemporary construction practice: the result ultimately delivered to the buyer is never the product of a single phase of the project nor of a single legal norm. From this follows a broader conclusion for legal practice. The more complex construction projects become, the less convincing is the characterization of the investor as merely a seller of a completed object. At the same time, the more pronounced the investor's organizational role becomes, the less persuasive is the argument that the investor should be liable only for acts personally performed. The true legal nature of the investor's position lies precisely between these two extremes.

6. Conclusion

The investor's liability for the legal and factual suitability of an apartment under construction does not constitute a separate and autonomous legal institut. Its legal nature supports the conclusion that it represents a specific form of complex contractual and transactional liability in which the existing rules of public law, the law of obligations, and property law are applied subject to certain particularities arising from the multi-stage character of a construction undertaking. The analysis has demonstrated that the investor's liability towards the purchaser is not formed only at the moment of sale. On the contrary, it takes shape much earlier: during the planning and permitting phases, in relationships with designers, supervising engineers, and contractors, within the structure of the construction contract, and ultimately in the capacity of the object itself to be validly transferred and properly registered. For this reason, the investor cannot be viewed merely as a seller vis-à-vis the buyer, but rather as the central actor within the project as a whole.

The principal hypothesis of this paper may therefore be regarded as confirmed. The investor's liability for the legal and factual suitability of an apartment under construction constitutes a specific manifestation of already recognized forms of legal liability. Its significance does not lie in creating a new institution of law, but rather in demonstrating the limitations of interpreting the investor's position exclusively through a single phase of the project or through the perspective of a single branch of law. What the contemporary construction undertaking requires is not a new legal regime governing investors, but a more precise and systematic interpretation of existing law from the perspective of the buyer, who ultimately bears the consequences of the entire preceding process. In other words, the central contribution of this paper does not consist in arguing that investors should be accorded a special legal status normatively separated from the existing legal system. The more significant contribution lies in demonstrating that the investor's liability towards the buyer can be properly understood only when all relevant segments of the construction and sales process are viewed as an integrated whole: planning, design, procurement of the permits required for construction, supervision, execution of works, and, ultimately, the conclusion of the contract of sale. Only through such an integrated perspective does it become clear why, in the contemporary market for apartments under construction, the investor is not merely a contractual party but rather a legal figure upon whom the consequences of the entire preceding project ultimately converge.

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ODGOVORNOST INVESTITORA ZA PRAVNU I FAKTIČKU PODOBNOST STANA U IZGRADNJI

APSTRAKT: Predmet rada jeste analiza odgovornosti investitora za to da stan u izgradnji u trenutku prodaje i pravnog prometa bude pravno i faktički podoban predmet sticanja. Cilj rada jeste da se utvrdi da li se odgovornost investitora prema kupcu može razumeti samo u okvirima klasične kupoprodaje nepokretnosti i opštih pravila ugovorne odgovornosti ili je reč o složenijem obliku odgovornosti koji nastaje na preseku javnopravnih pretpostavki gradnje, ugovornih odnosa u toku izgradnje i prometne podobnosti konačnog predmeta sticanja. Rad je teorijskog karaktera i zasnovan je na normativnom, dogmatskopravnom, analitičkom i sistemskom metodu, uz analizu relevantne domaće literature i važećih pravnih izvora. Osnovna hipoteza rada jeste da odgovornost investitora za pravnu i faktičku podobnost stana u izgradnji ne predstavlja poseban i samostalan pravni institut, već poseban oblik složene ugovorne i prometne odgovornosti u kojem se postojeća pravila javnog, obligacionog i stvarnog prava primenjuju uz određene specifičnosti koje proizlaze iz višefaznosti građevinskog poduhvata. Rezultati analize pokazuju da se investitorova odgovornost prema kupcu ne formira tek u trenutku prodaje, već znatno ranije, kroz plansku, dozvolnu, projektnu, nadzornu i izvođačku fazu, zbog

čega se njen sadržaj ne može pravilno objasniti ako se investitor posmatra samo kao prodavac ili samo kao naručilac radova.

Ključne reči: *investitor, stan u izgradnji, pravna podobnost, faktička podobnost, ugovor o građenju, odgovornost investitora, promet nepokretnosti.*

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