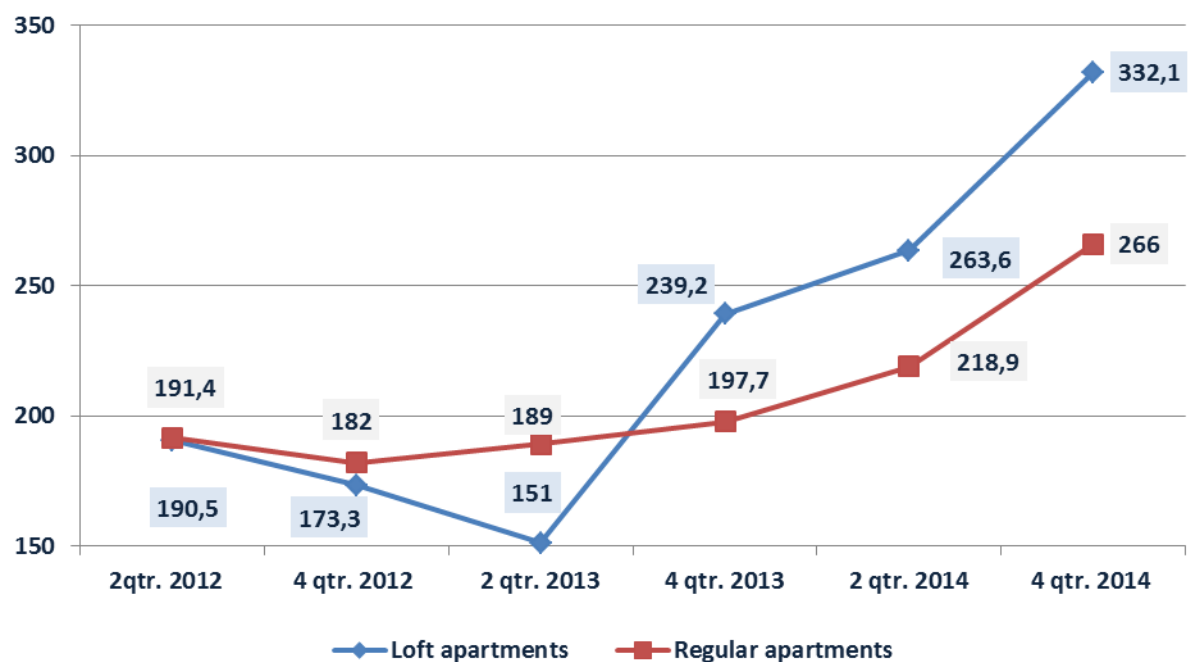


THE DEVELOPMENT OF APARTMENT-MARKET IN RUSSIA AS THE EXAMPLE OF WEAK URBAN PLANNING POLICY

The authors of the article identify the legal issues arising because of the apartment-market development. The article describes the apartment-market, including performance indicators of the scope of proposal in the primary housing market in apartment buildings and apartments in Moscow-city; the volume distribution of apartments proposal on administrative districts of Moscow-city, the price relation for 1 square meter of total apartment space in apartment buildings and apartments depends on the administrative district of Moscow. The articles analyses the legal status of the apartments and the reasons for the apartment market development.

Starting from the third quarter of 2013, the average cost of a square meter of loft apartments exceeds that of regular apartments in residential apartment buildings. As of the end of 2014, the foregoing gap makes up about 65 thousand rubles (nearly 21 %).

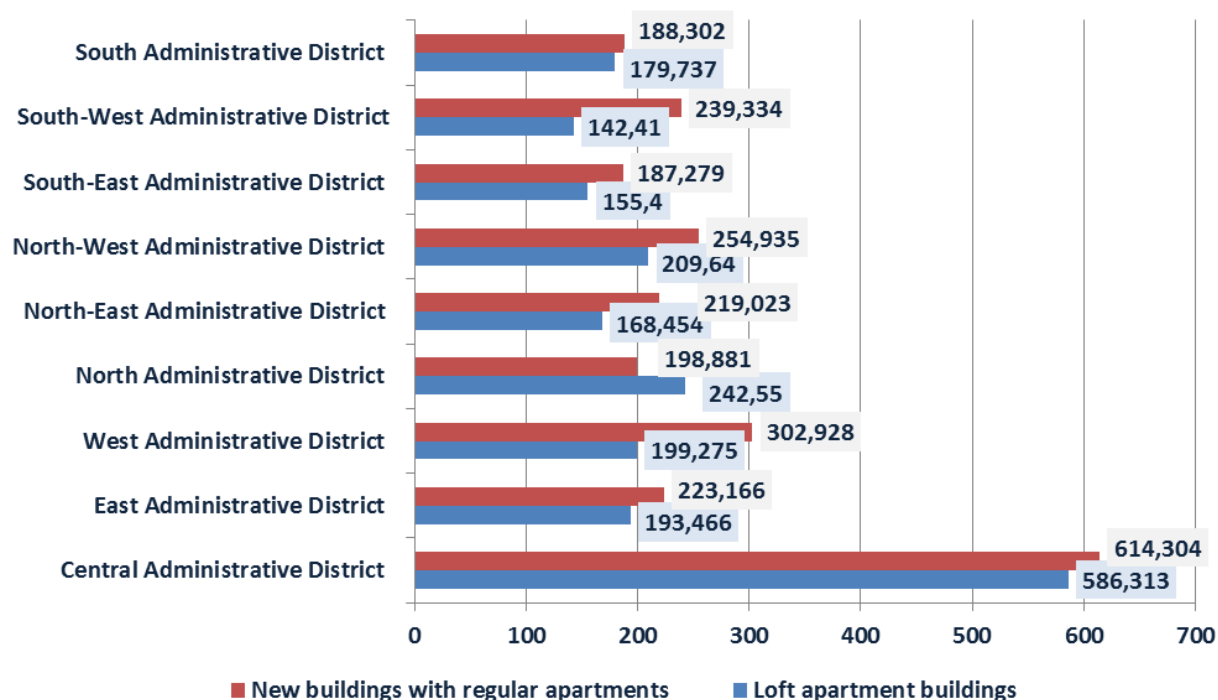
This, seemingly, comes to contradict our conclusion about the lower cost of loft apartments against that of regular apartments. The seeming contradiction can be explained as follows.



Dynamics of the weighted average supply price of regular apartments and loft apartments in the primary housing market in Moscow (without taking into account the luxury real

estate market segment), (*RUR thousand per sq.m*)¹

Loft apartments cost 40 % less as compared with regular apartments in the South-West District of Moscow, and 34 % less than in the West District. These price advantages ensure that loft apartments outpace the competition with residential dwellings.



The cost of a square meter of regular apartments in residential apartment buildings against that of loft apartments according to their location across Administrative Districts of Moscow, (*RUR thousand per sq.m*)²

Loft apartments are built mainly in city's central areas and, therefore, in relatively more expensive locations. The remarkable fact is that it is 'expensive' lofts that are built for the most part while exactly in central areas the land plots for residential development appear to be almost non-existent. Construction of residential apartment buildings, within the framework of comprehensive territorial development, moves away to peripheral areas (in 'cheap' suburban areas). Meanwhile, the cost of regular apartments in peripheral areas is less than that of loft apartments in central areas. It turns out, therefore, that the difference in the cost of a square meter of the comparable types of dwellings is accounted for by the location of a construction site since the average price of loft apartments located in central areas is higher than that of regular apartments supplied mainly in peripheral areas of cities.

Future maintenance costs to be incurred by loft apartment owners, however, are considerably higher than those in respect of regular apartment owners. Maintenance costs include utility charges, payments for management company

¹ Est-a-Tet. Review of the New Construction Market in Moscow. Final Report for 2014, p. 5.

² URL: <http://www.irm.ru/articles/38236.html>

services, and also property and land taxes. By expert estimates, for example, the average maintenance costs in the Central Administrative District of Moscow make up 150 rubles per a square meter of residential dwellings, while, in respect of loft apartments, the average maintenance cost ranges from 180 to 190 rubles per a square meter³.

The Table below shows the average utility bills for loft apartments (loft aps) and regular apartments (regular aps).

Utility bills for loft aps Vs utility bills for regular aps⁴

<i>Utility Service</i>	<i>Loft aps</i>	<i>Regular aps</i>	<i>Higher utility bills for loft aps than for regular aps, (%)</i>
Electricity supply, RUR/kWt*hour	3,83	2,81	36,3
Water supply, RUR/cub. m	29,91	26,75	11,8
Sanitation, RUR/cub. m	20,53	19	8
Heat supply, RUR/Gcal	1 800	1 440,5	25

Owners of loft apartments are also forced to pay for additional services such as on-site security, consierge services, cleaning of premises, parking area, and so on. Loft owners hire a property management company to be held responsible for maintenance of the building, repair of common-use property, and also to be engaged in establishing the cost of utility services at its own discretion. In aggregate, as compared with utility bills in respect of regular apartments those charged in respect of loft owners may cost twice as much and even more.

Loft apartments are taxed at higher rates than residential dwellings. Housing allowances, as listed below, cannot be applied in respect to loft apartments since these are qualified as non-residential premises:

- Personal property tax deductions;
- Property-related tax deductions for purchasers of residential dwellings.

In addition to high recurring expenses the owners of loft apartments have no right to registration at the place of residence⁵. Yet, this doesn't deprive them of constitutional rights in social sector, though impedes transport access to social facilities. The living in non-residential premises forces the owners of loft apartments to enjoy social benefits outside their district which entails extra costs.

Russian legislation defines loft apartments as non-residential premises. And

³ URL: <http://realty.rbc.ru/experts/12/02/2015/562949993979952.shtml>

⁴ URL: <http://www.garant.ru/article/567202/>

⁵ Pursuant to Cl. 26.1 of Order 'On Approval of Administrative Procedures on Provision of a Public Service on Registration of Citizens of the Russian Federation by the Federal Migration Service at a Place of Temporary Residence and at a Place of Permanent Residence within the Russian Federation (Order #288 issued on September 11th, 2012) "a citizen shall furnish to the persons responsible for registration ... a document serving as a ground for occupying the dwelling (statement of a person (persons) who provided the dwelling to the citizen, an agreement, a certificate of state registration of rights (title to the residential unit), a court decision recognizing the right to use the dwelling or other document, or its duly certified copy, serving to confirm the right to use the dwelling)".

at present the legislation fails to regulate the existing relations in the sufficiently sustainable market of loft apartments which are widely used by persons as a place of permanent residence.

A similar problem emerges in respect of the legal status of loft buildings. Housing law of the Russian Federation, particularly Housing Code of the Russian Federation, applies two definitions – both suggesting the use of a building for dwelling purposes – an ‘apartment building’ and a ‘residential building’. Town planning legislation defines an ‘apartment building’ as a type of building for dwelling purposes, and, additionally, introduces another type of dwelling - a ‘terraced house’ (or a row house).

Any other types of buildings for dwelling purposes are not identified by the Russian laws. Under the current laws, therefore, non-residential buildings with loft apartments, in legal terms, cannot be qualified as apartment buildings, residential buildings, or terraced houses.

The lack of legal regulation in respect of a special status of buildings with loft apartments caused legal gaps in regulation of the issues relating to construction and design of the buildings. Since no special requirements, among them town planning requirements, to design and construction of the buildings have been envisaged until recently, their design and construction procedures, in practice, relied on regulations adopted for design and construction of non-residential buildings.

Town planning problems arising in connection with the erection of loft buildings have not been solved until now despite the presence of serious conflicts emerging in practice. Buildings with loft apartments designed for dwelling purposes are built in areas not intended for residential development. Neither town planning legal provisions nor land use zoning requirements separately regulate construction of multi-use buildings with loft apartments.

In this regard, Article 35 of the Town Planning Code of the Russian Federation (hereinafter, TPC RF) regulates the types and the composition of territorial zones: ‘as a result of land use zoning there may be determined residential zones, public and business zones, industrial zones, engineering and transport infrastructure zones, recreational zones ... and other types of territorial zones’.

Residential zones, therefore, may include those of single-family houses, low-rise buildings, mid-rise buildings, high-rise buildings, and other types of residential zones. Residential zones allow for location of detached, in-built and attached social and utility facilities, public health facilities, pre-schools, primary schools and secondary education facilities, religious buildings, parking areas, garages, and objects related to dwellings of persons and not having adverse environmental effects. Residential zones may also encompass the territories intended for horticulture and dacha activities.

The erection of buildings with loft apartments in residential areas, hence, fails to meet the legislative requirements designed to regulate town planning activities since the buildings under consideration are neither qualified as a dwelling unit nor as a social facility.

The erection of buildings with loft apartments in direct violation of law

poses even more serious problem. It is not infrequent that buildings with loft apartments intended for permanent residence are located in recreational zones. According to Article 35 of TPC RF, a recreational zone may include areas within the boundaries of the territories occupied by municipal forests, squares, parks, municipal gardens, ponds, lakes, water reservoirs beaches, foreshores of common-use water bodies, and also within the boundaries of other territories being used and designed for recreation activities, tourism, physical training exercises and sports activities. While taking the advantage of the foregoing Article the developers build up the buildings with loft apartments as tourist facilities, e.g. as apart-hotels. Then, they either sale premises in that building or transfer a share of the right of ownership to the building.

The situation with building up and using loft apartments is getting worse because housing law fails to explicitly prohibit the use of non-residential premises by persons as a living space and also to impose sanctions for using non-residential premises as a living space. Today the prohibition is far from being explicitly defined in the Russian laws. In the first place, the prohibition is not articulated in housing laws though, in some way, it has been defined in adjacent laws such as the Law on Sanitary and Epidemiological Well-Being of the Population. In practice, however, the relevant regulatory bodies fail to apply the foregoing law so that to regulate the relations in respect of tenure, use and disposal of loft apartments.

The situation provokes a conflict between two groups of owners in one building: owners who use apartments as a living space and owners who use them for entrepreneurial activities (e.g. rent out the apartments as office space). The situation becomes especially urgent if the non-residential premises intended for different purposes share the same floor. Technically, the owners of loft apartments who rent them out as office space appear to be law-abiding persons since they use the apartments in accordance with their legal status as a ‘non-residential premise’. Yet, such a law-abiding attitude, in practice, may infringe on the interest of the owners who use their loft apartments as a living space because it is not uncommon that engineering systems of a building with loft apartments (and even engineering systems of ‘blocks’ of apartments) are not designed for their actual use as non-residential premises (office space). At the same time, infringement on the interests of those owners who use the apartments as office space also takes place because of ‘weak’ engineering systems. Indeed these owners appear to be considerably deprived of the benefits they may expect to gain through a purchase of non-residential premises. Review of the judicial practice provides the evidence of a substantial number of claims filed in connection with disputes between the owners who use their loft apartments as a place of permanent residence and the owners who use their loft apartments as office space⁶.

There also exists problem with conversion of loft apartments to dwellings.

⁶ See, e.g., appeal ruling of the Moscow City Court (# 11-14206/13, issued on May 28th, 2013); Judicial decision of the Ninth Arbitration Court of Appeal (# 09AII-32741/12, issued on November 25th, 2012).

In great many cases, loft apartments located in multi-use buildings may fall short of meeting the requirements as envisaged by the Housing Code of RF, Decree #47 issued by the Government of the RF and also by provisions of town planning laws since the apartments were designed in line with the requirements to non-residential premises and non-residential buildings. At present the owners of loft apartments, therefore, face limited opportunities when it comes to conversion of their apartments to dwellings.

Developers take advantage of the situation by way of reducing the cost of their construction projects, building up loft apartments in place of apartment buildings, and passing off the former as dwellings almost equal to regular apartments in apartment buildings.

Loft apartments locate, for the most part, in historic downtown areas for the following reasons:

- Land plots allocated for residential development have been already used while there still exists some opportunities for construction of non-residential units;
- Buyers with substantial financial capacities for purchase of dwellings value walking and transport accessibility of central areas, hence they choose to live and work in downtown areas of a city;
- Developers with focus on the relevant groups of buyers prefer to benefit from developing downtown areas intended for public and business use, rather than launch residential development projects in a city's peripheral areas.

Development of the loft apartment market - as an illegal segment of real estate market - reveals, at the same time, several underlying specificities of relations existing in Russia's town planning and housing sectors:

1) Economic relations prevail over legal ones since legislative requirements – as these pertain to real estate development and sale – appear to be only partially complied with, if at all ignored once the interests of developers come into play.

2) Absence of clearly articulated town planning policy specifying the priorities of a city's spatial development, along with the lack of requirements to architectural look of a city lead to sporadic urban development as a result of inconsistent decision-making on the part of private investors.