

## **6. Property subject to Mortgage, Jeon Se Gwon (registered lease/loan with a right of foreclosure) Art. 576**

Art 576 applies when, due to hypothec, Jeon Se Gwon, registered option, or (preliminary) attachment:

- buyer is unable to acquire the property, or
- loses the property entirely (through foreclosure auction), or
- has to pay to extinguish the hypothec, etc. in order to keep the property he bought..

This is essentially a breach of contract remedy (1 year limitation period inapplicable). The seller fails to discharge his contractual duty to purge the hypothec or registered lease.

- Inapplicable if buyer assumed the debt secured by the property. 2002Da11151: In such a case, buyer deemed to have waived the right to seek remedies under Art 576.
- Applicable when the seller breaches the agreement to discharge the debt and, as a result, (1) property is subject to foreclosure auction; or (2) buyer discharged the debt to prevent the foreclosure auction (Art. 576(2)).
- Applicable also to sale of superficies or Jeon Se Gwon on which a creditor registered hypothec. Seller of superficies or Jeon Se Gwon shall be liable under Art. 576 if the superficies or Jeon Se Gwon becomes subject to foreclosure auction upon the creditor's exercise of hypothec. Art. 577

- 92Da21784: Creditor has registered option to buy the property in the event of borrower's default. The borrower sold and conveyed the property to the buyer. Borrower/seller subsequently failed to repay the debt to the creditor. The creditor exercised the option which destroyed the buyer's title. Buyer can resort to Art 576 to terminate the sale or to seek damage.
- 2007Gahap3334: Property subject to preliminary attachment registered in favour of a creditor. If the property is subsequently sold and the creditor eventually prevails, then the buyer will have to surrender the property to the creditor. The buyer may resort to Art. 576 to seek remedies from the seller.

#### Remedies:

- Upon losing title of the property as a result of foreclosure auction, buyer may terminate the sale contract. (If, however, the buyer has been enjoying the property in the meantime, there is little point in terminating the contract. the buyer may simply seek damage (damages in lieu of performance) resulting from the loss of the property – without terminating the contract.
- If buyer discharged the debt to prevent foreclosure auction, buyer may claim reimbursement from seller.
- Buyer may claim damage, if any (Art 576(3)).
- Remedies exercisable as and when foreclosure/discharge happens.
- The seller is in breach of contract.