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Selling off-the-plan housing in Vietnam

Prepared by CNC



SELLING OFF-THE-PLAN HOUSING ON THE MARKET IN VIETNAM

The increase in housing demand and extending policies of investment in construction and housing development in Vietnam, the business operations of housing compromises of buying off –the plan is the way moving forward.

In Vietnam, the legal framework of buying off-the-plan housing transactions has recently grown considerably. It started by recognising pledge, mortgage transactions¹ of buying off-the-plan housing, then trading transactions² will enact a series of legislations instruments and other guidelines thereof such as the Law on Real Estate Business 2006, Decree No. 71/2010/ND-CP, Circular 16/2010/TT-BXD, etc.

Until now the Law on Housing 2014 and Law on Real Estate Business Law 2014 and guidelines are tighter and regulated in detail to overcome the limitations and shortcomings of the law in sale, guarantee, mortgage, lease and hire-purchasing the off-the-plan housing.

In this newsletter, we aim at providing conditions and legal procedures that requires project developers to comply with the current law enabling them to sell the off-the-plan housing. This article gives an overview of off-the-plan housing sale, the transacted object of sale contract, the content, form of the contract and the sales of off-the-plan housing process.

1. The off-the-plan Housing

- 1.1. The Law on Real Estate Business 2014³ and the Law on Housing 2014⁴ approaches the term “off-the-plan Housing” in a similar way, and the same to the spirit of the Law on Real Estate Business 2006. Accordingly, it is understood as *the house is in the construction stage and has not been accepted for use*.
- 1.2. This definition also means that the law allows project developers to use a more favorable capital mobilization source by allowing for the sale⁵ of off-the-plan housing – when it is still in the construction stage. In other words, the law does not require the project developers to have adequate capital to complete their housing before putting it on the market.
- 1.3. Besides, the purchasers will also have the opportunity to enjoy preferential price as well as better financial preparation than available housing. However, in practice, the purchase of off-

¹ See more in Decree No. 178/1999/ND-CP dated 29 September 1999 in relation with the ensuring loans of credit organisations; Clause 1, Article 342, Civil Code 2005.

² Law on Real Estate Business 2006.

³ Clause 4, Article 3, Law on Real Estate Business 2014.

⁴ Clause 19, Article 3, Law on Housing 2014.

⁵ Clause 1, Article 54, Law on Real Estate Business 2014.



the-plan housing is potentially riskier for purchasers, so the policy will tighten and increase the conditions for off-the-plan housing to be sold on the market.

2. The Conditions to Sell the off-the-plan Housing on the Market

- 2.1. Sale by off-the-plan housing is a way to collect advance capital by the project developers and for this purpose the project developers tend to optimize this capital raising source at the start of any project. However, the feature of this type of property - which is not tangible at the time of sale, seems risky and tricky to the purchasers.
- 2.2. In order to safeguard the interests of the parties, the law lays down provisions such as the necessary legal barrier where off-the-plan housing needs to be established before being sold out. In addition, setting certain conditions is an effective tool for the relevant authorities to control the sale of this type of property on the market.
- 2.3. Article 55 of the Law on Real Estate Business 2014, the general requirement is to have certificates on land use rights (LURC), project documents, approved construction drawing granted by appropriate authorities, construction license in case required by law, the acceptance to the completion of technical and utility infrastructure corresponding to the projects progress.
- 2.4. In addition, the Law on Real Estate Housing 2014 has two new noteworthy points officially came into effect on 1 July 2015, which includes:
 - 2.4.1. Having to complete the foundation prior to opening the sale of the apartment projects, mixed-use buildings intended to stay:
 - (a) In case of off-the-plan apartments or mixed-use building intended to stay, there must be the acceptance certificate certifying the completion of the foundation of that building.
 - (b) Previously, under Decree 71/2010/ND-CP, the project developers could collect a maximum of 20% capital from each of the apartment unit(s) prior to the completion of the foundation. Since 01 July 2015, if the foundation of the buildings has not been completed but the project developers wants to raise finance for the project, the project developers would have to sign the investment co-operation contracts with their purchasers. In the investment co-operation contracts, the project developer will receive the contributed capital from the purchasers and pay the interest, not the apartment owner.
 - 2.4.2. The Department of Construction (“DC”) must be notified indicating that the housing is qualified for sale.



- (a) In Clause 2, Article 55, Law on Real Estate Business indicates that before the sale or lease-purchase of the off-the-plan housing, the project developers have to notify the DC that the housing is qualified for sale, lease-purchase. Within 15 days after receiving the notification, the DC shall have to reply in writing to the developer of the apartments for sale or lease-purchase.⁶
- (b) The above projects which are opened to be sold after 01 July 2015 the above two conditions must be satisfied. This does not depend on the time of approval of the investment, allocation or lease of land before or after 01 July 2015.

3. The Contract of Sale for the Future Formed Housing

3.1. General view

3.1.1. Under Article 430, Civil Code 2015, the property sales contract is the agreement between parties whereby the seller transfers the ownership of the property to the purchase and the purchaser pays the seller. For the apartment sales contract or for other use purposes, the Civil Code refers to Law on Housing and other relevant laws.

3.1.2. Until now, the Law on Housing 2014 as well as the Law on Real Estate Business 2014 and the relevant guiding documents do not define the term “Sale by of off-the-plan Housing’ rather it goes into the details of elements of this type of contract including the form, content of terms, rights and obligations between parties. Thus, in general, the sales contract of the off-the-plan Housing is the document expressing the agreement of parties in sale-purchase transaction of off-the-plan housing.

3.1.3. Accordingly, the seller will hand over the house and land using right to the purchaser when the construction is completed and the purchaser must pay the seller according to the price and payment method agreed in the contract. Although the agreement is based on the will of the parties, it still contains a lot of risks when the object of the transaction is the great valued property as in the sales contract of off-the-plan Housing, as a result, the law always has particular rules related to contracts to ensure the legitimate rights and interests of the parties.

3.2. The contents of the Sales Contract of off-the-plan Housing

The contents of the sales contract of off-the-plan Housing also includes the basic content of a sales contract of existing property which is listed in Article 18, Law on Real Estate Business 2014, such as, the information of house, the price and payment method, etc. However, the sales contract of off-the-plan housing has some differences that needs to be, included:

⁶ See more at Article 19, Decree 99/2015/NĐ- CP

3.2.1. The payment clause in sale-purchase of off-the-plan housing.

- (a) In the sales contract of off-the-plan housing, the price agreed by the parties but the payment method have to comply with the provision of Clause 1, Article 57, Law on Real Estate Business 2014.
- (b) In particular, the payment in a Sale-Purchase contract of the off-the-plan Housing have to be split into progressive payment. The first payment will not exceed 30% of the contract value, the following payments shall correspond to the progress of the construction but shall not exceed 70% of the contract value if the house has not yet been handed over to the customer. If the seller has the co-operation of a foreign investment company, the total shall not exceed 50% of the contract value.
- (c) In case the purchasers have not received the LURC certifying the ownership of the property attached to the land, the seller or the lessor must not collect more than 95% of the contract value. The retention of the contract will be paid when the appropriate authority has issued the LURC to the purchasers.

3.2.2. The Project Developers' obligations to supply information.

- (a) The objective of the contract is that the property completed in the future would contain a lot of potential risks for the purchasers. Article 58, Law on Real Estate Business 2014, further provides that the right to require the sellers to supply information relating the progress of the construction, the usage of advances and on-site inspections. This is the purchaser's right and also the obligation of the developer. Accordingly, the obligation of the developer begins when both parties agree to enter into a contract and is maintained throughout the duration of the contract.
- (b) In particular, before entering into the contract, the project developers has the obligation to supply the purchasers the information related to the land use right, the project description/brief, approved construction design granted by the appropriate authorities, construction license in case required by law, acceptance to the completion of technical and utility infrastructure corresponding to the projects progress. In case of apartments, the mixed-use building completed in the future, there must have the acceptance certificate certifying the completion of the building foundation.

3.2.3. The purchasers have the right to transfer the sales contracts of off-the-plan housing.

- (a) Under Article 59.1, Law on Real Estate Business 2014, the purchaser is entitled to transfer the sales contract of off-the-plan when the ownership application

has not been submitted by the project developer to the appropriate authorities.

- (b) This transfer is only applicable to the purchaser being households, individuals and organization that have no real estate business registration and the transfer has to be made in writing with the approval of the project developer.⁷
- (c) The right to transfer the sales contract of off-the-plan housing is different to the right of the party contributing capital, investment co-operation to partition housing product. The current law stipulates that any party to the proportion housing contract is not entitled to transfer the right of the proportion housing to other individuals or organization if they have not signed the sale-purchase contract prior to the off-the-plan housing contracts with the project developers.

3.3. The form of the Sales Contract of off-the-plan housing

3.3.1. Under Clause 7.2, Law on Real Estate Business 2014, the contracts of real estate business have to be made in writing. The notarization or authentication of contracts shall be agreed upon by the parties, except for the sales contract, lease-purchase agreements of houses or construction works or contract of transfer land use right, where both parties are households and individuals as provided in Clause 2, Article 10⁸ of this Law must be notarized or authenticated.

3.3.2. The sales contract of the off-the-plan housing is a type of contract for real estate business, so it has to comply with the provisions related to the form of sale-purchase. Therefore, the sales contract of the off-the-plan housing has to be made in writing, the notarization and authentication is not compulsory but depends on the agreement between both parties.

3.3.3. The sample contracts prepared by the sellers have to comply with the provision of the law in the form of content and procedures of the contract registration. Article 7.2, Decree 76/2015/ND-CP provides that the sample contract in real estate business that is issued together with this Decree which has the reference value in the process of negotiating and signing the contract.

3.3.4. The parties can agree to add clauses and terms in the sample contract but they have to ensure that the signed contract has the full contents specified in Article 18, 47 and

⁷ See more at Clause 1, Article 59, Law on Real Estate Business 2014. Clause 9.2(a) and 11.2, Decree 76/2015/ND-CP dated 10 September 2015.

⁸ Clause 2, Article 10, Law on Real Estate Business is applicable to organizations, households, individuals who sale, transfer, lease, or lease-purchase real estate in small scale and irregular basis.



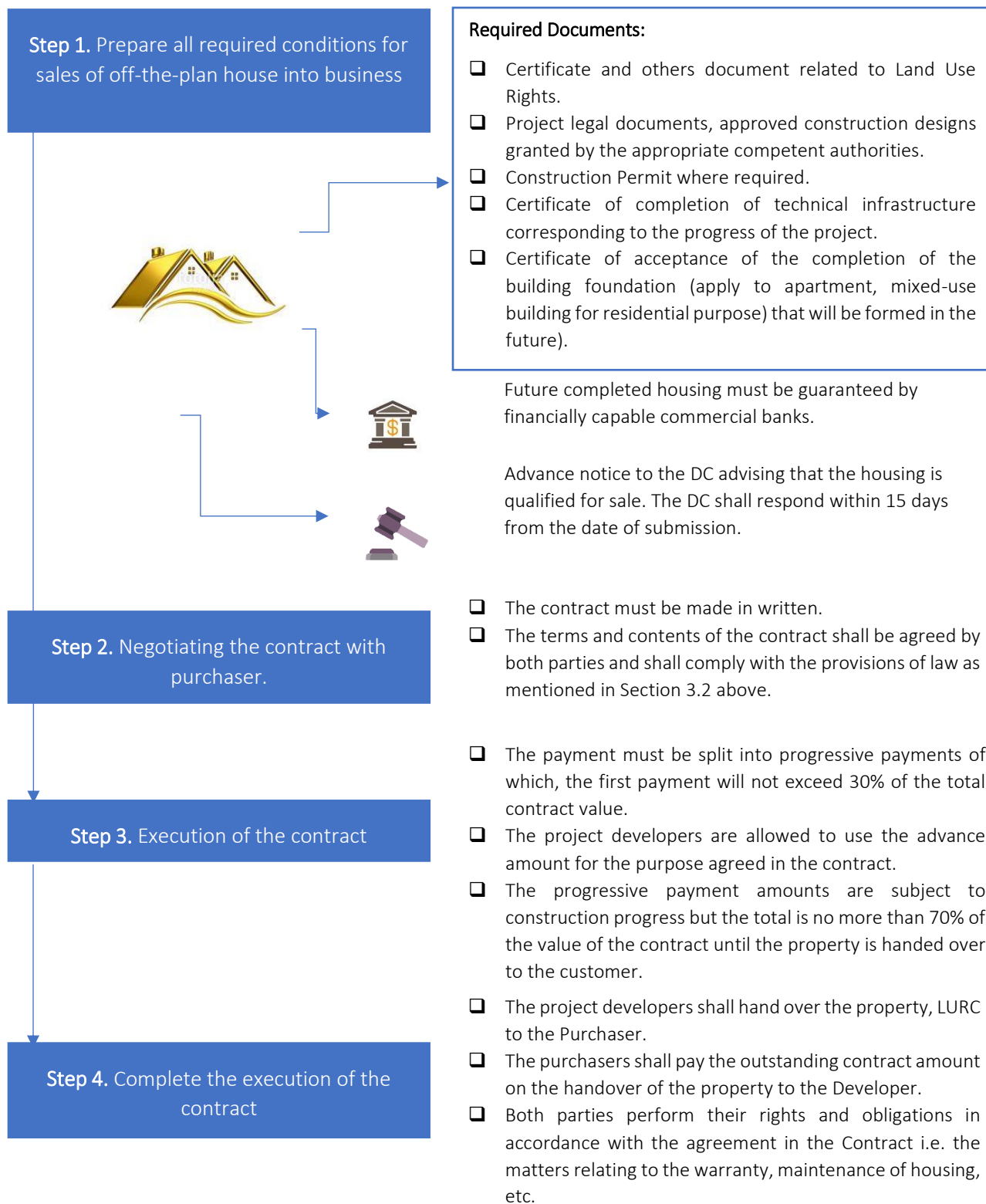
53 of the Law on Real Estate Business. The details of the contents in the contract shall be agreed by both parties but shall not contradict the law.

4. The process of purchasing future formed housing in Vietnam

(See on the next page).



Diagram: The process of purchasing future formed housing in Vietnam



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