



Improving the legal framework of template contracts to protect the rights of buyers in off-the-plan housing contracts

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Abstract

The Law on Real Estate 2023, which comes into force from August 01, 2024, has many new rules about real estate business contracts. According to this law, when enter into real estate contracts, the parties have to use template contracts enacted by the State. Therefore, this article analyses and gives a clear overview of the rules of template contracts in off-the-plan housing transactions - legal tools in order to protect the rights of buyer as well as harmonize the interests of all parties in these relations, thereby proposes some solutions to promote healthy development in the real estate market.

Keywords: Template contracts, real estate market, land law, off-the-plan housing contracts

Introduction

Real estate business is considered an activity with a profound impact on the economy and society. Essentially, this activity is conducted primarily through civil contracts. Furthermore, the contract for purchasing off-the-plan houses serves as the legal basis for establishing the rights and obligations of the parties involved in the transaction and is used by judicial bodies to resolve disputes.

However, due to its nature, real estate business often involves large transactions and carries significant legal risks, especially for buyers. Currently, most off-the-plan houses are template contracts prepared by the seller. These contracts are typically drafted in a way that favors the seller and disadvantages the buyer, particularly in the event of a dispute ^[1]. Therefore, establishing the framework to govern off-the-plan housing contracts is essential to protect the interests of buyers, who are considered the weaker party in the contract relations, thereby balancing the interests of both parties and preventing disputes.

The regulations on template contracts in off-the-plan houses transactions aimed at protecting the interests of buyers were formally recognized in The Law on Real Estate (REBL) 2014 and most recently in the REBL 2023. Especially, the current law includes detailed, specific, and clearer provisions on template contracts in real estate business compared to previous stages. For example, the REBL 2023 dedicates an entire Chapter VI (from Article 44 to Article 52) to regulating real estate business contracts. This includes new provisions on concepts such as the real estate business contract and its use.

In summary, the legal framework regulating template contracts in off-the-plan housing transactions aimed at protecting the interests of buyers is increasingly being improved to balance the interests of the parties and reduce legal risks for buyers. In the current context, where the real estate market is becoming increasingly subdued and lackluster, the introduction of regulations on template contracts in off-the-plan housing transactions stands out as a significant and meaningful development. This regulation not only better protects the interests of buyers but also reinforces customer confidence in real estate businesses and the real estate market. Therefore, this paper primarily

examines and analyzes the new aspects of the REBL 2023 related to the legal framework for regulating template contracts in off-the-plan housing transactions, evaluates some limitations in current legal provisions, and proposes solutions for legal improvements.

Material and Methods

To assess the relevant provisions of the REBL 2023 related to renewable energy development, the authors employed several effective research methods, including descriptive, qualitative, and analytical legal research. In addition, the study involves an evaluation of how the REBL 2023 addresses and supports the development of renewable energy.

Results and Discussions

1. Legal Framework Regulating Template contracts in Future Residential Property Transactions

Definition of Template contracts in Future Residential Property Transactions

For the first time, the law officially defines the concept of real estate business contracts. According to the REBL 2023 ^[2], a real estate business contract is understood as “a written agreement between a real estate business organization or individual meeting the conditions specified by this Law and another organization or individual for: buying, selling, renting, or leasing residential properties or construction works; transferring, renting, or leasing land use rights with technical infrastructure in real estate projects; transferring the whole or part of a real estate project.”

Essentially, the off-the-plan housing contracts is a type of real estate business contract, distinguished from contracts for real estate services. It was only with the REBL 2023 that the concept of real estate business contracts was clarified in terms of its content. Corresponding to different types of business, the REBL distinguishes clearly between real estate product business and real estate service business. This regulation addresses limitations from previous stages, separating real estate product business from real estate service business.

From this analysis, the concept of off-the-plan housing contracts can be understood as follows: An off-the-plan housing contract is a written agreement between a real estate business enterprise (the seller) and a customer (the buyer) regarding the sale of future residential properties for profit. Accordingly, the seller will transfer the residential property along with the land use rights to the buyer upon completion of construction, and the buyer must pay the purchase price to the seller according to the terms agreed upon by both parties in compliance with legal regulations ^[3].

Use of Template contracts in Future Residential Property Transactions

Theoretically, the choice of contract type depends on the agreement between the parties, aiming to respect and uphold the agreements made. However, as discussed, the buyer of residential properties is often in a weaker position due to the "hidden" clauses in template contracts drafted by the seller. Therefore, to protect the buyer's interests, real estate business laws include provisions to safeguard this group. It is important to note that depending on economic and social conditions, as well as lawmakers' perspectives at different times, the use of template contracts in future residential property transactions may or may not be mandatory. For example, under the 2006 REBL and the REBL 2014 along with its implementing regulations (Decree 76/2015/ND-CP), the use of model contracts was merely advisory during contract formation, provided that the contract included all required main contents and did not violate legal regulations. However, Decree 02/2022/ND-CP, which amended Decree 76/2015/ND-CP, introduced mandatory provisions for the use of template contracts between parties rather than just a reference as before. Specifically, it states: "The sale of real estate must be formalized using the standardized contract specified as follows: the sale or lease-purchase contract for apartment buildings as outlined in Form No. 01 in the Appendix attached to this Decree." Building on this, the REBL 2023 has officially codified this requirement in Article 6 of Decree 02/2022/ND-CP. Accordingly, "real estate project investors and real estate business enterprises must use the standardized contract specified in Article 44 of the REBL 2014..." Therefore, mandating the use of template contracts is essential to reduce risks detrimental to the buyer, enhance equality between parties in residential property sales contracts, and minimize disputes in practice.

Form of Template contracts in Future Residential Property Transactions

Unlike previous regulations, the REBL 2023 does not specify whether contracts in real estate business must be in writing. This is an issue that ideally should have been carried over but was unfortunately overlooked by this law. However, in return, Article 44, Section 6 of the REBL 2023 indirectly addresses the form of the off-the-plan houses as follows:

"The effective date of the contract is the date when the last party signs the contract or by another form of acceptance indicated in the contract, unless otherwise agreed by the parties. If the contract is notarized or authenticated, the effective date of the contract is the date when the notarized or authenticated document takes effect according to the regulations on notarization and authentication."

The regulation on the effective date of contracts in the REBL 2023 indicates that the off-the-plan houses must be

made in writing. Additionally, Article 45, Section 2 of the REBL 2023 stipulates that real estate project investors and real estate enterprises must use template contracts specified in Article 44 of the REBL 2023 and must publicly disclose these contracts before applying them as required by Point d, Section 2, Article 6 of the REBL 2023 on the public disclosure of standardized contract information. From these analyses, it can be concluded that contracts between parties in future residential property transactions must be in writing, except in cases provided for by Article 129 of the 2015 Civil Code. The requirement for contracts in writing in the REBL 2023 is to better protect the rights and obligations of the parties involved, particularly the buyer, and to minimize and prevent disputes. Furthermore, written contracts facilitate evidence collection for resolving any potential disputes. On the other hand, it is important to note that the REBL 2023 does not require the parties to have the future residential property sale contract notarized or authenticated by a notarial organization but only mandates that the parties enter into a written standardized contract.

Content of Template contracts in Future Residential Property Transactions

According to Article 46 of the REBL 2023, template contracts in off-the-plan houses must include the main terms required by law, which include: names and addresses of the parties; property information; sale price; payment methods and deadlines; bank guarantees for payments to the property developer; delivery schedule and associated documentation; warranty terms; rights and obligations of the parties; responsibilities for breach of contract; penalty clauses; conditions for contract termination or cancellation and remedies; dispute resolution methods; and the effective date of the contract.

Comparing the contents of the REBL 2023 with the REBL 2014, there are notable updates in terms of property information, payment terms, delivery of property, and associated documentation. These changes reflect legal adjustments to better accommodate future residential property transactions. However, the freedom to negotiate in off-the-plan houses contracts is not absolute but is constrained by state regulations through specific provisions

1. Contract Object Terms: The REBL 2023 imposes stricter conditions compared to the REBL 2014. For instance, when entering into an off-the-plan houses, the seller must meet several requirements: (i) The property and construction must have commenced according to construction laws; (ii) Have relevant land use rights documentation; (iii) Have construction documents; (iv) Obtain a bank guarantee for financial obligations; (v) Have a completion report for the building's foundation; (vi) Have a document from the Department of Construction confirming the property meets business conditions; (vii) Publicly disclose property information as required. These requirements aim to prevent sellers from entering contracts before meeting all business conditions, thereby protecting buyers from potential losses.

2. Payment Terms: This is a significant new development in the REBL 2023. The new law adds regulations on advance payments, addressing issues of non-compliance in recent years. Specifically, developers can only collect a maximum deposit of 5%

of the sale price. Additionally, the REBL reduces the percentage of the first payment to no more than 30% of the contract value (including the deposit), with subsequent payments aligned with construction progress but not exceeding 70% of the contract value before property delivery and 95% before the issuance of the ownership certificate. This regulation maintains the spirit of the REBL 2014 but introduces stricter controls on deposit and payment percentages to prevent misuse of funds and protect buyers. Notably, the REBL 2023 requires that payments be made through bank accounts to curb cash transactions and potential money laundering in real estate deals. However, the REBL 2023 does not specify whether these bank accounts should be with the bank providing the financial guarantee or any legal bank operating in Vietnam, which may complicate control over funds.

3. **Property Delivery Terms:** The new law requires that the delivery of future residential properties be documented with a delivery report and related legal documents (Article 25 of Decree 95/2004, REBL 2023). This new requirement enhances the seller's responsibility and protects buyers from delays or non-delivery of property. In practice, delivery terms are often violated, with sellers using phrases like "expected delivery time" to evade responsibility for delayed delivery.
4. **Bank Guarantees and Issuance of Ownership Certificates:** These provisions are similar to those in the REBL 2014 and are designed to protect buyers. Without bank guarantees, sellers might fail to meet delivery obligations. Furthermore, even if buyers receive the property, they may not obtain an ownership certificate for a long time, preventing them from exercising their ownership rights.

Legal Effectiveness of template contracts in off-the-plan contracts

The effectiveness of template contracts in off-the-plan houses is a crucial issue. Ultimately, contracts are designed to bind the rights and obligations of the parties involved^[4], meaning that the contracts must have legal force. Currently, the REBL 2023 does not specify the legal effectiveness of template contracts in real estate transactions, including off-the-plan houses. Therefore, determining the legal effectiveness of these contracts relies on the Civil Code 2015.

Comparing the Civil Code 2015 with the REBL 2023, several key issues can be identified:

1. **Conditions for the Effectiveness of off-the-plan houses contracts:** According to Article 117 of the Civil Code 2015, the conditions for the legal effectiveness of off-the-plan houses include: (i) Both the seller and the buyer must have the legal capacity to enter into the contract; (ii) The contract must be entered into voluntarily and in good faith; (iii) The contract's content must not violate legal prohibitions or societal ethics; (iv) The contract must be in the prescribed form. Additionally, before entering into a template contract, the seller must publicly disclose this information to the buyer, as stipulated in Article 45 of the REBL 2023, regarding the registration and use of template contracts.

This is a new requirement and is considered one of the conditions for the legal effectiveness of off-the-plan houses, aiming to protect buyers.

2. **Timing of the Standardized Contract:** Real estate business contracts are to be signed when the property meets all the conditions for commercial activity according to the REBL 2023. This requirement is a new inclusion in the REBL 2023 to protect buyers' interests. In practice, sellers might disregard these conditions to secure funds unlawfully before the property is ready, posing significant risks to buyers, especially if the property is not yet completed at the time of contract signing.

Sanctions for violations related to template contracts in future residential property transactions

In practice, violations of regulations concerning off-the-plan houses are mainly manifested through: not executing real estate business contracts in writing; failing to include all legally required content; or entering into template contracts without complying with the prescribed regulations and conditions.

Currently, sanctions for such violations are outlined in Decree 16/2022/ND-CP on administrative fines in the construction sector. Although the law provides clear administrative penalties for each type of violation, these sanctions are not very effective or deterrent due to their relatively low amounts. The maximum fine for violations related to template contracts in off-the-plan houses is capped at 600 million VND. This could lead to sellers being willing to violate regulations, thereby undermining the rules on template contracts and causing harm to buyers.

Recommendations and proposals for improving the law on template contracts in off-the-plan houses

Firstly, amend Regulations on template contracts: Revise Article 44 of the REBL 2023 to include a direct requirement, similar to Article 17 of the previous REBL 2014, specifying that contracts in real estate transactions, including template contracts in off-the-plan houses, must be in writing. This amendment would affirm and enhance the legal effectiveness of using template contracts in real estate transactions, providing a solid legal foundation for protecting the rights of buyers of future residential properties.

1. **Strengthen Administrative Oversight:** Increase state administrative measures for managing real estate businesses regarding transaction conditions and real estate products. For example, according to the REBL 2023, one measure is to control real estate businesses' disclosure of template contracts before parties enter into off-the-plan houses. However, this requirement is easily violated if there are no strict control mechanisms. Therefore, it is recommended that in addition to the seller's obligation to disclose template contracts, there should be an agreement between the parties confirming that the seller has fulfilled their disclosure obligations. This would ensure that buyers have access to all necessary information and can make informed decisions about entering into contracts.
2. **Revise Payment Regulations:** Amend the REBL 2023 to stipulate that payments in residential property transactions must be made through a bank that

guarantees the financial obligations of the developer. This would ensure that the funds raised by the bank are also held by the guaranteeing bank, enhancing financial control and protecting buyer interests.

3. **Increase Administrative Penalties:** Significantly raise the administrative fines for violations related to template contracts, potentially increasing them 5-10 times in cases of non-compliance by sellers. Penalties should be based on the consequences of the violations, and sanctions should be stringent enough to deter and prevent breaches by sellers.
4. **Establish Precedents for Dispute Resolution:** Promptly issue judicial precedents for resolving disputes in off-the-plan houses transactions. Disputes in future residential property transactions are becoming more common and complex, affecting social order. However, there are currently few precedents for resolving such disputes. The Supreme People's Court should issue precedents to guide dispute resolution and ensure consistent judicial practice, thereby better protecting the rights of the parties involved in off-the-plan houses contracts ^[5].

Conclusion

With the introduction of the REBL 2023, template contracts in transactions involving future residential properties off-the-plan houses have become an effective legal tool for protecting the interests of buyers. The off-the-plan houses framework establishes basic and essential legal standards that sellers must adhere to, which helps limit and prevent violations by sellers and reduces conflicts of interest between the parties. However, this legal framework still has limitations and is not yet fully comprehensive. Therefore, continuing to improve the legal regulations on off-the-plan houses is one of the most urgent issues currently.

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