



Some legal issues about bank guarantee to protect buyer's rights in buying and selling transactions of future conforming houses

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Abstract: In the context of strong development of the real estate market and technology, the application of guarantees in future housing transactions is becoming an important trend. Guarantees not only help increase transparency and safety for participating parties but also ensure fairness and protect the interests of buyers and sellers. With guarantee relationships in future housing sales transactions as a form of title insurance to protect property owners and home buyers from financial losses due to defects or issues related to property ownership. The article uses the method of analyzing written law, accessing secondary documents through Vietnamese practice on guarantees in future housing sales transactions and warning about some risks to protect rights. The buyer's benefits in the transaction of buying and selling houses to be formed in the future.

Keywords: Protection, Buyer Of Future Housing, Future Housing Purchase And Sale Transaction, Bank Guarantee.

1. Introduction

Along with the increase in housing demand and the expansion of housing construction and development investment policies in Vietnam, business activities of all types of housing, including housing to be formed in the future, have become increasingly popular. For people with future housing needs, it is also a favorable condition to meet the financial resources accumulated in the present and the future (Christian Ulbrich, 2021). However, buying houses built in the future brings many risks to home buyers due to their weak position in accessing information and assessing the level of safety for the seller in the transaction relationship. Therefore, ensuring the ownership rights of future home buyers requires legal support to protect the ownership rights of future home buyers - one of the measures. Contributing to minimizing the risk of insecurity and ensuring transparency and sustainability of the future housing market is a guarantee in future housing sales transactions (Bank Guarantees Simplified, 2024). With guarantee relationships in future housing sales transactions as a form of title insurance to protect property owners and home buyers from financial losses due to defects or issues related to property ownership (National Assembly of the Socialist Republic of Vietnam, 2014b). Guarantees not only help increase transparency and safety for participating parties but also ensure fairness and protect the interests of buyers and sellers. Many studies have approached on bank guarantee procedures in real estate business, inadequacies in housing purchase and sale contracts formed in the future (Hoàng Việt Trung, 2020), benefits of bank guarantee in investment activities (Do Thanh Lam, 2021), but the studies have not had an in-depth and systematic approach to risks in housing purchase and sale transactions formed in the future. The above article has a basis for researching the characteristics of the bank guarantee relationship in housing purchase and sale transactions formed in the future, identifying and warning the risks of the buyer in the housing purchase and sale relationship formed in the future in order to protect the interests of the buyer in these transaction relationships.

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Received: Apr 04, 2024;

Revised: Apr 17, 2024;

Accepted: May 26, 2024;

Published: Jun 30, 2024



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2. Materials and Methods

The research method used in this paper was normative method or doctrinal legal research. This method was carried out through literature studies or document studies because it refers to written regulations and other legal materials. This research was explanatory, which was legal research that provides explanations and aims to test a theory or hypothesis in order to strengthen or even reject a theory or hypothesis of existing research results (Suhaimi, 2018).

Data collection was carried out through the study of literature materials or secondary data which includes primary legal materials, secondary legal materials and tertiary legal materials, both in the form of documents and applicable laws and regulations related to bank guarantee to protect buyer's rights in buying and selling transactions of future conforming houses. This research data was obtained by first searching for data through library research related to books, scientific papers such as journals, accessing information sources from internet media. The approach used in this study was a statutory approach and an approach from the views of experts (conceptual approach). The statute approach was used to examine normatively juridically by looking at the form of statutory regulations and examining the content material regarding several aspects related to the legal issues at hand. The conceptual approach was used to study problems that have been formulated referring to legal principles in the opinions put forward by several scholars or legal doctrines (Suhaimi, 2018).

The main data in this study include primary data, secondary data and tertiary data. First, Primary Legal Materials, which are data obtained from sources in the form of applicable laws and regulations, in this case the Law on Real Estate Business 2014, the Housing Law 2014, Circular 11/2022/TT-NHNN dated September 30, 2022 of the State Bank of Vietnam on Bank Guarantees and along with other laws and regulations. Second, Secondary Legal Materials are legal materials that provide an explanation of primary legal materials. This legal material is in the form of literacy sources, including legal books and written works in the form of journals and so on related to the topic being discussed. Third, Tertiary Legal Materials, which are legal materials that serve to explain as well as complement primary and secondary legal materials. These legal materials are in the form of legal dictionaries, legal encyclopedias and articles obtained from internet media. All data is processed by descriptive analysis, namely by selecting theories, principles, norms, doctrines, and articles in laws and regulations that are relevant to the issues being discussed. Furthermore, the data analyzed qualitatively will be presented in the form of a systematic and comprehensive description by explaining the relationship between various types of data. Furthermore, all data is processed and then stated descriptively, so that in addition to describing the legal basis, it also provides solutions to the problems faced.

3. Results and Discussion

3.1. *Concept and characteristics of bank guarantees in future housing purchase and sale transactions*

Housing to be formed in the future is understood as housing that is in the process of investment and construction and has not yet been accepted and put into use. When signing a sales contract, the housing has not yet been formed and does not have a Certificate. Certification of land use rights, home ownership and assets attached to land.

According to current Vietnamese law, "Houses and construction works formed in the future are houses and construction works that are in the process of being built and have not been accepted and put into use" Clause 4, Article 3 (National Assembly of the Socialist Republic of Vietnam, 2014b) and "houses formed in the future". The future *is a house that is in the process of investment and construction and has not yet been accepted and put into use* Clause 19, Article 3 (National Assembly of the Socialist Republic of Vietnam, 2014a). Thus, housing formed in the future is housing that is in the process of investment and construction and has not yet been accepted and put into use.

Transactional relationships in buying and selling houses formed in the future are characterized by: (i) at the time of entering into the contract, the house has not yet completed construction investment or has been built but has not yet been accepted or discussed. delivery, which means that at the time of entering into the transaction, the owner has not yet been able to "see with his own eyes" the future house, but can only determine the existence of the property on the basis of figures and data. Specific designs and drawings approved by competent State agencies; (ii) because the house to be formed in the future is an asset that has not yet been formed, the buyer cannot fully exercise the rights of the owner of the house to possess, use and dispose of the house. However, the law still allows the buyer the right to use property rights arising from a house purchase contract or the house itself to be formed in the future as collateral to secure the fulfillment of obligations to the owner. other body; (iii) Regarding administrative procedures, housing to be formed in the future is in the process of completing administrative procedures, housing to be formed in the future is in the process of completing procedures for granting ownership certificates and Use rights for owners of houses formed in the future.

Guarantees for the sale, lease and purchase of houses to be formed in the future are bank guarantees _Clause 4 Article 3 (State Bank of Vietnam, 2022). Accordingly, the guarantor, which is a commercial bank, commits to the guarantor, which is the buyer or hire-purchaser, to perform financial obligations on behalf of the guarantor, which is the investor, when the deadline for delivery and receipt comes. The housing has been committed but the investor does not hand over the housing to the buyer without performing or not fully fulfilling the financial obligations under the signed housing purchase or lease purchase contract; The investor must accept the debt and repay the guarantor, which is a commercial bank, according to the signed agreement. In the guarantee relationship to buy a house to be formed in the future, the interests of the house buyer are understood when the obligation to hand over the house comes due, if the investor fails to perform or does not fully perform this obligation, the home buyer has the right to request the bank to fulfill the guarantee obligation without having to prove to the bank that the investor does not have the financial ability to fulfill the obligation to repay the advance amount and other amounts according to the law. Sales contract and guarantee contract have been signed -Clause 3, Article 56(National Assembly of the Socialist Republic of Vietnam, 2014b). The buyer only needs to prove to the bank that the investor has violated the commitment to hand over the house(Truong Thanh Duc, 2019). The buyer only needs to prove to the bank that the investor has violated the commitment to hand over the house. Requiring a mandatory guarantee in the sale or lease of future housing is a regulation aimed at protecting the home buyer who is the weak party in this transaction relationship. Many customers said that at the time of buying a house, they did not understand the processes, procedures, and guarantee periods to request investors and commercial banks to comply with the law (Minh Son, 2018).

3.2. *Risks of the home buyer and the role of guarantees in future housing transactions*

When participating in a future housing transaction, the buyer in the transaction also faces many risks (Luu Quoc Thai, 2023): (i) Lost money but did not receive the house. This is the biggest risk for future home buyers. Because this is a type of "buying a house on paper", also known as buying "young rice", the product may not be formed. Besides force majeure reasons (such as economic crisis, natural disasters, etc., which rarely occur), in fact there have been many cases where investors "grabbed" customers' money and fled without implementing the project. scam or fraud by selling a house to many different people. In addition, in case the investor violates the law during project implementation (such as building not in accordance with the license), the customer may not receive the product even though he has paid(Vneconomy, 2016).

For example, some customers ordered apartments on floors built without permission in building 8B Le Truc, Hanoi. According to the decision of the authorities, this illegal construction will be dismantled. This means that customers who have advanced money in the form of buying a house to be built in the future will not receive the house. Alt-

though they can get their advance money back, economic losses are unavoidable. In addition, dismantling illegal construction will have certain effects on the quality of the remaining construction.

The consequence is that many customers lose a large amount of money that has to be saved for a long time to earn or have to “burden” bank loans with interest and principal payments (Khoa Tan & Nguyen T 2022).

(ii) Not receiving the house on schedule and with the agreed quality. This is a common situation for real estate projects that sell houses to be formed in the future. The delay in handing over houses to customers according to the committed schedule can stem from many different reasons. Lack of capital and failure to mobilize enough capital to implement the project are the main causes of this type of violation. However, there are many cases where investors deliberately appropriate customers' capital to invest in many projects at the same time or use capital for personal purposes, causing no project to be completed on schedule. This type of violation also causes a lot of economic damage, making life difficult for customers when they have to pay rent while waiting to receive the house according to the contract (Dinh Dan, 2016).

In addition, in reality, to attract customers to participate in transactions, many investors advertise products of different quality than the products that will be handed over to customers with the label “luxury apartments” or “luxury apartments” products. “5 stars”.... However, in many cases the houses handed over to customers have the interior materials swapped out and do not have the amenities shown in the model houses as advertised by the previous investor. This is a type of violation in the quality of real estate goods that makes it very difficult for customers and very few to ask the investor to compensate them for their damages (C.Mai, 2013).

(iii) Not being issued a certificate of home ownership within the time limit prescribed by law. A home ownership certificate is very important to the owner (home buyer) because it is a legal deed confirming their ownership of the home. Having a Certificate of Ownership is also one of the important conditions to exercise your housing rights. Previously, Clause 3, Article 50 of Decree No. 71/2010/ND-CP stipulated: “The investor is responsible for carrying out procedures to request a competent state agency to issue a Certificate of land use rights, ownership of housing and other assets attached to land to the buyer within 50 days from the date of handing over the house to the home buyer, except in cases where the home buyer voluntarily carries out procedures to request a Certificate. Receive”. According to Clause 7, Article 26 of the 2014 Housing Law: “Within 50 days from the date of handing over the house to the buyer or from the time the lessee has paid in full as agreed, procedures must be carried out. Request a competent state agency to issue a Certificate to the home buyer or lessee, except in cases where the buyer or lessee voluntarily carries out procedures to request a Certificate”.

However, the above regulations for certain reasons have not been seriously implemented in practice. In many cases, commercial housing buyers have received housing for many years but still do not receive a Certificate of home ownership (Hong Giang, 2023). The main reason is that investors wait until all (or almost all) of the houses in a project are sold before carrying out the procedures for making a Certificate for convenience. It may also stem from the reason that the investor has committed violations during the process of investing in housing construction (such as building in excess of permits, not in accordance with the license, etc.) but has not taken “corrective” action as required by the investor. Competent state agency cannot carry out completion procedures to issue a Certificate of ownership.

Guarantees in future housing sales transactions play an important role in ensuring the accuracy, reliability and financial security of commitments between buyers and sellers.

Guarantee helps protect the interests of both buyers and minimize risks to the assets or financial resources they have invested. The guarantee helps protect them from losing cash or buying property that isn't what they wanted. With a guarantee in future housing sales transactions, it ensures that they will receive the property as committed in the sales

contract if the investor (seller) does not hand over the house in the future. future housing as agreed in the contract or future housing does not meet the agreed conditions.

Guarantee helps enhance transparency and reliability in real estate transactions. Having a guarantee allows both parties to trust each other's commitment and ensures that the transaction will be carried out in a transparent and fair manner. In the event of a dispute between buyer and seller, having a guarantee can help resolve the dispute more effectively. Guarantees provide a protection mechanism for both parties and provide peace of mind when issues need to be resolved.

Guarantee is an important factor in promoting the development of the real estate market and supporting financial activities related to housing transactions. Having clear regulations on guarantees helps create a stable business environment and attract interest from investors and buyers. Financial institutions often require guarantees to ensure that the loan will be used for the right and safe purpose. Having clear and effective regulations on guarantees helps minimize risks and create conditions for stable market development.

Guarantees help enhance the reputation and image of the real estate industry and contribute to the sustainable development of the economy. Conducting housing transactions with assurance and trust from a third party will create a positive impression and enhance the reputation of the industry. Having an effective guarantee system helps create favorable conditions for business and investment activities, thereby promoting the comprehensive development of the economy.

Before selling future housing, the investor of a real estate project must have a commercial bank capable of guaranteeing the investor's financial obligations to customers when the investor does not discuss it. Delivering housing on schedule as committed to customers according to regulations _Clause 1, Article 56 (National Assembly of the Socialist Republic of Vietnam 2014b).

In addition, before selling houses to be formed in the future, the investor must have a bank guarantee their financial obligations to customers when they do not hand over the house according to the committed schedule _Article 56 (National Assembly of the Socialist Republic of Vietnam, 2014b). The scope, content and guarantee fee are agreed upon by the parties and must be made into an official contract. The contract is called a guarantee for the sale, lease and purchase of housing to be formed in the future. The content usually includes the project name, list of houses in the project, guarantee amount, guarantee fee.

The investor is responsible for sending a copy of the guarantee contract signed with the bank to the buyer when signing the sales contract. The guarantee contract has a term until the house is handed over. If the investor does not hand over the house according to the committed schedule, when the home buyer requests, the bank must refund the advance payment and other amounts to the buyer according to the sales contract signed with the investor.

In case a commercial bank guarantees on the basis of a counter-guarantee, the counter-guarantee commits to the commercial bank that it will fulfill the financial obligations to the commercial bank when the commercial bank must fulfill its obligations. perform financial obligations on behalf of the investor; In this case, the investor must accept the debt and repay the counter-guarantor according to the signed agreement. If an investor has a sales license from the Department of Construction, it does not mean that they have a bank guarantee. Therefore, in the sales license, the Department of Construction always requires the investor to provide a guarantee according to law.

Because according to the process, after the Department of Construction issues a sales license, the project owner will sign a sales contract with the customer. After receiving the sales contract, the bank will issue a guarantee certificate to each customer. Without a sales license, it is impossible to have a guarantee deed for each customer. The reason for this is that the current law, decrees and guiding circulars do not require investors to submit a guarantee contract with the bank in the dossier notifying the house that is eligible for sale to the Department of Construction.

According to Clause 3, Article 1 of Circular 13/2017/TT-NHNN, commercial banks consider and decide to grant guarantees to investors when the investor's project meets the conditions of real estate formation. In the future will be put into business according to the provisions of Article 55 of the Law on Real Estate Business Law. This means that the conditions for the investor to be granted a bank guarantee in this situation include: (i) The project has complete legal documents according to regulations; and (ii) There is a written notification that the house is eligible to be sold or rented from the provincial housing management agency; or the documents prove that the deadline has passed and the management agency has not responded in writing. In addition, Article 58 of Decree 16/2022/ND-CP stipulates a fine from 400,000,000 VND to 600,000,000 VND for one of the acts of "selling or leasing to buy future housing that There is no contract with a commercial bank capable of guaranteeing the investor's financial obligations when the investor does not hand over the house according to the schedule committed to the customer or the content of the guarantee contract. not correct or complete according to the provisions of law"; At the same time, the remedial measure is to "force a contract to guarantee the investor's financial obligations according to regulations".

Comparing the above regulations with the provisions in Article 55 of the Law on Real Estate Business Law and Point b, Clause 2, Article 19 of Decree 99/2015/ND-CP, the following observations can be drawn: (i) In order for housing to be formed in the future to be eligible for business, a document from the Department of Construction notifying that the housing is eligible for sale or lease-purchase (if any) is a prerequisite. This is the event that must happen first ("Event 1"). (ii) The Bank's issuance of a guarantee to the investor is an event that takes place after Event 1 ("Event 2"). (iii) Logically, Event 2 is not a required condition for Event 1 to occur; but Event 1 will be a sufficient condition for Event 2 to take place. (iv) If Event 2 does not exist, the investor will be administratively sanctioned and apply remedial measures according to regulations.

In the context that Article 55 and Article 56 of the Law on Real Estate Business Law both stipulate that the investor's respective obligations are "before selling or leasing to buy future housing", the topic is open for The next discussion is if Event 1 has occurred but Event 2 does not yet exist, does the investor have the right to sign a sales contract with the customer. Based on Point b, Clause 2, Article 19 of Decree 99/2015/ND-CP and the analysis in Section 2 above, the investor still has the right to sign a contract with the customer in this situation. Thus, the non-existence of Event 2 probably does not affect the validity of the sales contract. Instead, the issue of investor responsibility will be raised in the context that Event 1 exists but Event 2 has not occurred. And the extended situation is that even when the state agency has issued a document requesting the application of corrective measures according to the above regulations within a certain period of time, the investor still cannot respond, so Event 2 does not take place. After that, what will be the next sanctions? Because at this time, the management agency has imposed a fine and requested corrective measures that the investor cannot meet according to the provisions of law.

In fact, some investors and brokerage floors show bank documents agreeing on the policy of granting guarantees to investors if they meet the conditions to consider this a guarantee deed. In essence, this document is not an official guarantee contract for the sale or lease of future housing that home buyers are interested in. This is also not a guarantee deed that the bank issues to each home buyer after having a sales contract. Therefore, it is necessary to distinguish between the guarantee deed and other documents that the bank issues to the investor.

In addition, Regulatory frameworks should protect tenants by prohibiting immediate lease withdrawals by landlords. While security for tenants is required, the regulatory framework should also be friendlier to landlords. Legislation that strongly favors renters may overburden landlords with excessive risks, which can ultimately hurt market affordability (Insight report April, 2021).

For many household items, securing financing is the major hurdle to access home ownership. Meeting down payment requirements are often prohibitive or result in an

excessively high interest rate. Traditional mortgage transactions are also laden with fees and other administrative costs that can be burdensome. Automating the process can help eliminate added costs and also increase access to more affordable interest rates. A successful example is the fintech company Better.com, which has been able to reduce the overall timeline by more than 30%, eliminate administrative charges and offer interest rates around 20 basis points below market (Interview with senior representative from Global Asset Capital during World Economic Forum roundtables in 2020, 2020).

3.3. Conditions and procedures for bank guarantees in future housing purchase and sale transactions and value of guarantee commitments

According to Article 56 of the Law on Real Estate Sales 2014, the above guarantee issue is specifically regulated as follows: (a) Real estate project investors, before selling or leasing to buy houses to be formed in the future, must be guaranteed by a commercial bank with enough capacity to guarantee the investor's financial obligations to customers when the investor Failure to hand over the house on schedule as committed to the customer. The State Bank of Vietnam announces a list of commercial banks capable of providing guarantees in real estate business to be formed in the future. (b) The scope, conditions, content and guarantee fees are agreed upon by the parties but must ensure the fulfillment of the guarantor's responsibilities specified in Clause 3 of this Article and must be made into a contract. The investor is responsible for sending a copy of the guarantee contract to the buyer or hire-purchase party when signing the purchase or hire-purchase contract. The guarantee contract has a term until the house is handed over to the buyer or lessee. (c) In case the investor does not hand over the house according to the committed schedule and the buyer or lessee requests, the guarantor is responsible for refunding the advance payment and other amounts to the customer. goods according to the signed housing purchase and lease purchase contract and guarantee contract.)d) Guarantees for the sale, lease and purchase of future housing shall comply with the provisions of this Article and the provisions of law on guarantees. Accordingly, the list of commercial banks capable of providing guarantees in real estate business formed in the future will be announced by the State Bank of Vietnam from time to time on the Bank's electronic information portal. Government. According to the provisions of Clause 1, Article 13 of Circular 11/2022/TT-NHNN, commercial banks have the capacity to guarantee housing to be formed in the future when: (i) In the license for establishment and operation or the document amending and supplementing the commercial bank's establishment and operation license stipulates the content of bank guarantee activities; (ii) Not prohibited, restricted, suspended or temporarily suspended from guaranteeing future housing.

Commercial banks consider and decide to grant guarantees to investors who do not hand over houses to be formed in the future according to the schedule committed to customers when: (a) The investor meets all the requirements specified in Article 11 of Circular 11/2022/TT-NHNN (except in cases where commercial banks guarantee the investor on the basis of counter-guarantee), specifically: Have full civil legal capacity and civil act capacity according to the provisions of law; Guaranteed obligations are legal financial obligations; Assessed by the credit institution or foreign bank branch that issued the guarantee as capable of refunding the amount of money that the credit institution or foreign bank branch must pay on behalf of when performing the guarantee obligation.

The investor's project meets all the conditions for real estate to be formed in the future and is put into business (Article 55 of the Law on Real Estate Business 2014): Has documents on land use rights, project documents, and approved construction drawing designs. Approval authority, Construction Permit in cases where a Construction Permit is required, documents on acceptance of completion of construction of corresponding technical infrastructure according to project schedule (in case of a house). Apartment buildings, mixed-use buildings with residential purposes formed in the future must have a record of acceptance of the completed foundation of that building); Before selling or leasing future housing, the investor must notify the provincial housing authority in writing that the housing is eligible to be sold or leased.

The procedure for guaranteeing future housing is carried out as follows: *Step 1*: Based on the request of the investor or the counter-guarantor, the commercial bank reviews, appraises and decides to grant a guarantee to the investor. *Step 2*: The commercial bank and the investor sign a guarantee contract according to the provisions of Article 56 of the Law on Real Estate Business. The contract for guaranteeing houses to be formed in the future is made in the form of a guarantee agreement specified in Clause 11, Article 3, Article 14 of Circular 07/2015/TT-NHNN and the content is consistent with the provisions of Article 3. 56 Law on real estate business 2014.

Step 3: The commercial bank will issue a guarantee commitment to each buyer: Within 10 working days from the date of signing the housing purchase or lease purchase contract, which stipulates the investor's obligation to refund the advance payment and other amounts to the buyer upon maturity. to deliver and receive the house as committed but the investor does not hand over the house to the buyer, the investor must send the commercial bank a contract to buy or lease a house; Within 5 working days from the date of receiving the housing purchase or lease purchase contract, the commercial bank, based on the contract and guarantee agreement, will issue a guarantee commitment to the buyer and send it to the following address: of the buyer; (a) The guarantee commitment is issued in the form of a letter of guarantee to each buyer; (b) The validity period of the guarantee commitment is determined from the date of issuance until at least 30 days after the committed time for delivery and receipt of the house specified in the house purchase or lease purchase contract.

Procedure for guaranteeing future housing for investors who do not hand over the house on schedule _Clause 4 Article 13 (State Bank of Vietnam, 2022): (a) Based on the request of the investor or the counter-guarantor, the commercial bank shall consider, appraise and decide to grant a guarantee to the investor; (b) Commercial banks and investors sign a contract to guarantee housing formed in the future according to the provisions of Article 56 of the Law on Real Estate Business 2014 and Article 15 of Circular 11/2022/TT-NHNN;

A housing guarantee contract to be formed in the future is a guarantee agreement between the commercial bank and the investor and other related parties (if any) regarding the commercial bank's approval of the guarantee for the investor. in selling, leasing and buying houses to be formed in the future - Clause 13, Article 3(State Bank of Vietnam, 2022). (a) After signing the housing purchase or lease purchase contract, which stipulates the investor's financial obligations, the investor sends the housing purchase or lease purchase contract to the commercial bank for request to the commercial bank. issue a letter of guarantee to the buyer; (b) Commercial banks, based on housing purchase and lease purchase contracts and future housing guarantee contracts, issue a letter of guarantee and send it to each buyer or to the investor to provide a letter of guarantee. to the buyer according to the agreement.

Thus, to protect the interests of the buyer in this transaction, it is necessary to clarify (Luu Quoc Thai 2023): Firstly, the financial obligation that the investor is guaranteed by the bank according to the regulations of the State Bank is only "advance money" from the customer. Meanwhile, according to the provisions of Article 56 of the Law on Real Estate Investment, the amount of money that the guarantee bank may have to pay on behalf of the investor is not just an advance payment because it has "other money", which can be a fine. Contract, compensation (if any).

Second, will the obligation guaranteed by the bank be fulfilled for all future home purchases? According to Clause 3, Article 56 of the Law on Real Estate Sales and Point b, Clause 1, Article 12 of Circular No. 07/2015/TT-NHNN, it is clear that banks only guarantee obligations agreed in the house purchase and sale contract. This means that, if the real estate project is guaranteed by the bank, but in the home purchase contract with a certain customer due to "negligence" there is no agreement on this obligation, the customer's rights will be affected. also not guaranteed.

Third, when does the bank's guarantee obligation arise: from the time the guarantee contract is signed or from the time the bank officially informs the investor of its ac-

ceptance of the guarantee? Guarantee for real estate projects? This is very important because in reality, housing project investors often receive advances from customers immediately after the project is announced in the form of "reservations" and "deposits" because Reasons for not being eligible to sign a contract to buy and sell a house to be built in the future. These amounts of money are almost unlimited because there are no specific regulations by law.

Fourth, when is the time to sign the guarantee contract, before or after the investor signs a contract to buy and sell a house to be formed in the future with the customer? According to Clause 1, Article 56 of the Law on Real Estate Sales, this contract must be signed before the investor signs the house sale contract, but Circular No. 07/2015/NHNN seems to have the opposite regulation (Point b, Clause 1, Article 12). The State Bank's regulations are also reasonable in that the guarantee obligation must be a specifically identified obligation (or obligations) (in this case, the obligation in the house purchase contract between the investor and the customer). specific item). If this inadequacy is not clarified and a dispute actually arises, it will be very difficult to resolve and the customer's rights will be difficult to ensure.

Fifth, the end date of the guarantee contract (or guarantee obligation) is inconsistently and inappropriately specified. According to Clause 2, Article 56 of the Law on Real Estate Sales: " The guarantee contract has a term until the house is handed over to the buyer or lessee" while Circular No. 07/2015/TT-NHNN stipulates: " The commitment to guarantee the sale or lease purchase of future housing must be valid until at least 30 days after the date of handover of the house to the buyer or lessee as agreed by the investor. Investing with home buyers and lessees. "Thus, after receiving the house handover and the guarantee contract ends, the investor's financial obligations to the customer that have not yet been fulfilled will not be guaranteed. Recently, Circular No. 11/2022/TT-NHNN was issued on September 30, 2022 (effective from April 1, 2022) replacing Circular No. 07/2015/TT-NHNN, Circular No. 13 /2017/TT-NHNN has resolved some of the above shortcomings but some limitations still exist.

Sixth, in case the bank guaranteeing the real estate project suddenly falls into difficulty, or even bankruptcy, what will be the legal rights of the home buyer? This is completely possible in market economic conditions because the assessment of whether an investor is capable of implementing the project on schedule and using the advance money for the right purpose is up to the bank itself. performance guarantee.

In addition, an important issue related to bank guarantees is guarantee fees. Current law does not set a "fee frame" based on project value but leaves it for the parties to agree. However, in any case, real estate businesses must incur additional costs and this amount will certainly be accounted for in the real estate price. Housing prices will therefore increase, which will cause many difficulties for social life.

Around the world, the issue of bank guarantees for the sale of houses formed in the future has also been applied in some countries (Maria Lusía Castro, no date). In addition, in other countries there is another similar solution: the investor's obligations can be guaranteed by an insurance company. If the investor cannot refund the customer, the insurance company will be responsible for refunding the entire advance payment to the customer within 30 days of receiving the request (Maria Lusía Castro, no date). This is a method that the State should consider putting into law to diversify forms of protection for home buyers.

As stated above, the implementation of guarantee regulations for investors in Vietnam is largely not taken seriously. The reason is that the financial capacity of domestic economic organizations is not high. They always have to find ways to mobilize capital to implement projects, so they cannot have idle money deposited with credit institutions for protection. undertake its obligations to customers. The recent real estate bond crisis is proof. However, the root cause of this problem is due to unreasonable regulations on financial capacity for real estate project investors. According to current regulations, they only need to "have equity capital of not less than 20% of total investment capital for projects with land use scale of less than 20 hectares, not less than 15% of total investment

capital for projects with land use scale of less than 20 hectares “project with a land use scale of 20 hectares or more” is considered to have financial capacity to implement the project (Article 14 of Decree No. 43/2014/ND-CP; Clause 2, Article 2 of Decree No. 02/2022/ND-CP). The remaining capital they can mobilize from many different sources. The unreasonableness is even greater when the law does not clearly stipulate whether the above capital ratio applies to one or more projects. This leads to some investors implementing many projects at the same time but only having a single capital source that meets the conditions for implementing a project but is included in the financial statements to prove the capacity for many projects. different projects (Ngoc Cuong & Hong Khanh, 2023). This is one of the main reasons why projects are suspended or behind schedule when investors cannot mobilize capital.

Thus, to ensure the insurance interests of the buyer in the transaction of buying and selling houses to be formed in the future, the investor must be obliged to provide bank guarantees to customers buying houses to be formed in the future. but does not clearly stipulate the legal value of this guarantee commitment (Bui Duc Giang, 2016).

3.4. Recommend measures to protect home buyers in future housing purchase contracts

Firstly, complete regulations on bank guarantees in future housing purchase and sale transactions.

Regarding the scope of the guarantee and the time of signing the guarantee contract: the guarantee must apply to the entire real estate project and all financial obligations of the investor to the customer, including money. Compensation for damages, contract fines and all amounts of money that the investor receives in advance from customers in the form of "reservation money" and "deposit" to ensure contract conclusion. Therefore, before investors receive money from customers in any form, they must have a signed guarantee contract with a commercial bank. In addition to regulations on guarantees, the law should stipulate additional forms of insurance from businesses for parties to choose from. In addition, for these security activities to be feasible, the financial capacity requirement for investors must be raised to at least 40% (capital owned by the investor over total investment capital). project investment) and this capital can only be used to demonstrate financial capacity for a project.

Regarding the end of the guarantee contract: it should be specified as the time when the guaranteed obligations have been fulfilled and not based on the time of handover of the house. In addition, bank guarantees will incur costs for real estate projects. Therefore, this should not be rigidly considered a mandatory measure, but other measures can be used instead.

About the guarantee fee. Current law stipulates that the guarantee fee is agreed upon by the credit institution with the investor. The bank guarantee fee is very competitive, only from 0.05 - 0.12%/month, the main collateral is the project product. This fee does nothing to increase pressure on project prices. The guarantee is aimed at the ultimate goal of guaranteeing customer rights when the investor cannot perform their obligations. The state bank's guarantee regulations do not clearly state who bears the guarantee fee. One is that the investor bears the fee, the other is that the investor and the customer share this fee. If the investor bears the fee, it is likely that the investor will push that fee into the house sale proceeds and therefore the house price will also be pushed up. However, the buyer must accept it, because this is their right and when they have a right, they have to pay some costs. However, the 2014 Law on Real Estate Business does not stipulate the specific guarantee fee and who pays it, making businesses and parties wishing to buy or rent-purchase houses confused and worried. Regulations on guarantee terms essentially create confidence for customers in making advances to real estate investment and business enterprises to solve capital problems for production and business activities. It is necessary to supplement regulations on specific guarantee fees for housing construction projects formed in the future through assessing the reputation and capacity of investors. In addition, it can be stipulated that guarantee costs will be contributed jointly by the investor and the home buyer or tenant; Because the bank guarantee is beneficial to both

parties. It should not be stipulated: "The parties can agree to jointly pay the guarantee fee offered by the commercial bank in case the contract has provisions on bank guarantees. The contribution percentage is agreed upon by the parties (Hoàng Việt Trung, 2020) .

Regarding the form of guarantee commitment (Hoàng Việt Trung, 2020). Buyers and lessees of future housing need to pay attention to the form of the guarantee commitment. According to Mr. Le Hoang Chau, Chairman of the City Real Estate Association. Ho Chi Minh City, "maybe some cunning investors will prepare a no-guarantee proposal for home buyers to sign when buying a house to circumvent the law" (Ca Hao, 2015). There are two forms of guarantee commitment that give rise to the rights and obligations of the parties: letter of guarantee and guarantee contract. The remaining forms do not give rise to legal value. Currently, the law does not stipulate sanctions for failure to provide guarantee; Therefore, customers can only protect their rights by carefully studying the provisions of the law before participating in buying, selling or leasing future housing. Therefore, it is necessary to supplement legal sanctions to deter and punish in this case.

The regulation on two forms of guarantee commitment makes bank guarantee procedures more complicated. A commitment to guarantee by letter of guarantee will not clearly express the rights and obligations of the parties like a guarantee contract. A guarantee is a written commitment to perform financial obligations between the investor and the commercial bank without including related parties. The guarantee contract is a written agreement between the guarantor (commercial bank) and the guarantee recipient (investor) and related parties (buyer, lessee of future housing). about the guarantor's performance of financial obligations on behalf of the guaranteed party when the guaranteed party fails to perform or does not fully perform the obligations committed to the customer. Obviously, if the parties sign a guarantee contract, it will ensure more feasibility for the buyer and lessee of future housing, so stipulating a form of bank guarantee commitment is appropriate. co-guarantee to not only ensure the rights of the parties but also reduce procedures for commercial banks when issuing sample commitments, letters of guarantee...

Regarding building and diversifying products on guarantees in housing purchase and sale transactions such as: (a) Payment guarantee: The buyer can ask the seller to provide a payment guarantee to ensure that the payment amount will be protected and only transferred when the conditions have been agreed. (b) Quality guarantee: The buyer can ask the seller to provide a guarantee on the quality of the house, ensuring that the house meets the standards and requirements agreed in the purchase contract. (d) Legal and ownership guarantees: The buyer can also ask the seller to provide a guarantee on the ownership of the house, ensuring that there are no disputes over ownership or other legal issues may affect the buyer's ownership rights later. (e) Guarantee for project completion: In case the house is being built or completed, the buyer can request the seller to provide a guarantee for completing the project on schedule and with quality as committed. This helps ensure that the buyer will receive a complete and trustworthy home once the transaction is completed. (d) Risk and insurance guarantee: The buyer can request the seller to provide a risk and insurance guarantee related to the house, including a guarantee for issues such as fire, natural disasters, and damage. Technical problems, etc. This helps protect the buyer from unwanted risks and ensures security for the house after transfer.

By applying guarantee measures in housing transactions, the buyer will have more protection and peace of mind during the transaction process. At the same time, the application of guarantees also helps create a more professional, transparent and fair real estate transaction environment, while enhancing the trust and satisfaction of both parties in the transaction and guarantee. Transparency and fairness in transactions, regulations on responsibilities of related parties, and other legal regulations related to guarantees (State Bank of Vietnam 2022).

Second, when buying housing as an asset to be formed in the future, people need to pay attention to three factors: the project's construction permit; Whether or not the project has been approved for sale by the Department of Construction; Has the project been

guaranteed by a bank for the sale/lease purchase of housing to be formed in the future? Among the above factors, the third factor is very important, because this is one of the bases to protect the direct rights of home buyers in case the investor fails to complete the handover of the house on time. degree.

Third, buying a house to be formed in the future has the benefit of being priced lower than a project that has already been built, helping to create flexibility for buyers to access housing ownership. Affordability must include both financial access (affordable rents, low barriers to home ownership) and access to the appropriate standard of assets in terms of space, health, location and access to basic services. Realizing this vision and delivering buildings that are liveable, sustainable, resilient, and affordable will require the use of five critical enablers: (i) Digitalization and innovation; (ii) Robust regulatory frameworks; (iii) Talent and knowledge; (iv) Proof of value; (v) Stakeholder engagement (Christian Ulbrich, 2021).

Furthermore, the buyer can pay in many installments: According to Article 57 of the Law on Real Estate Business 2014: "Payment in the purchase, sale, lease and purchase of real estate formed in the future is made many times, the first time. no more than 30% of the contract value, subsequent times must be consistent with the real estate construction progress but the total must not exceed 70% of the contract value before handing over the house or construction project to the customer; In case the seller or lessor is a foreign-invested enterprise, the total amount must not exceed 50% of the contract value.

Fourth, besides the above benefits, buying houses to be built in the future has many potential risks such as: Long time, slow and uncertain progress; Having to buy a house on paper is risky if the investor does not implement the project or does not implement the project on schedule (Pham Law). Notarization will help ensure the legality of the content of transactions, ensure that the implementation of those transactions is objective, honest, and in accordance with the will of the parties, ensuring the rights and interests of the parties. parties participating in the transaction, avoid confusion, errors or other discrepancies that can lead to invalid contracts or violations of the law... there is an urgent need to have a stricter control mechanism for real estate transactions, and notarization is the most effective solution at this time through the professional capacity of notaries, their legal knowledge and experience (Anh Tuan, 2023).

Fifth, buying a house built in the future must have a letter of guarantee from the bank. When signing a contract to buy and sell a house to be formed in the future, customers should request a guarantee. Customers must request a guarantee contract between the investor and the bank:

To obtain a bank guarantee letter when purchasing a house to be built in the future, the buyer needs to take the following steps: (i) at the time of signing the contract, the buyer needs to request the investor to provide a contract. Guarantee signed between the investor and the guaranteeing commercial bank. This contract is made in the form of a "guarantee agreement".

Buyers need to fully check all information such as: Information about the guaranteeing bank/bank branch, guaranteed project information, guarantee limit, conditions for granting guarantees to home buyers... If The investor cannot provide the above documents, proving that the project has not been guaranteed by a bank and is not eligible for sale according to the law on real estate business; (ii) after signing the housing purchase contract, the buyer must request the investor to carry out the necessary procedures to provide a separate bank guarantee letter for the apartment he or she buys.

In fact, many investors have not seriously implemented guarantee procedures for customers for many different reasons (Minh Tuan, 2018). If the buyer can distinguish between two types of documents, the guarantee agreement for the investor and the letter of guarantee for the buyer, they will be able to determine when they can "ask for help" from the bank. The guarantee agreement is only the first step when the bank has a policy of granting it to the investor. At this time, the bank's guarantee liability does not arise. Only when the bank issues a letter of guarantee to the buyer does the bank's responsibility to the buyer arise (Service information, 2021). There are 3 main factors that make a

bank guarantee letter "difficult to appear" such as: the investor's financial capacity is poor, the project has problems and the investor does not want to spend about 2% more per year on insurance costs. receive. After 15 working days of signing the purchase contract, if the bank has not yet sent a guarantee certificate, the customer must contact the investor and the bank to receive a guarantee certificate. The guarantee fee will be agreed upon by the home buyer and the investor, usually 1% - 2% of the house value. If this fee is not included in the selling price, when the investor requests it, the customer must pay it to ensure their rights and avoid risks of not being able to hand over the house on time (Do Thanh Lam, 2021)

Sixth, Application of guarantees in transactions of buying and selling houses formed in the future. In the future, the application of technology and new forms of guarantee will help improve the efficiency and modernity of housing transactions. Smart guarantees, using blockchain and smart contracts, will help increase transparency, reduce risks and create a safer and fairer trading environment.

A specific example of applying guarantees in future housing transactions is the use of smart contracts and blockchain. In this case, a smart contract will be created on the blockchain platform, containing the terms and commitments between the buyer and seller. When the conditions are fulfilled according to the contract, the guarantee will be automatically activated, ensuring accuracy and transparency of the transaction. With the development of technology in real estate transactions, protecting consumer privacy and data security is very important. Future housing sales contracts should include provisions to protect personal information and ensure compliance with data protection regulations.

Authors should discuss the results and how they can be interpreted from the perspective of previous studies and of the working hypotheses. The findings and their implications should be discussed in the broadest context possible. Future research directions may also be highlighted.

4. Conclusions

Guarantees in future housing sales transactions are not only a useful tool to protect the interests of the parties but also an important factor to help promote the sustainable development of the real estate market. movables. The article provides risk warnings that buyers in the relationship of housing purchase and sale transactions formed in the future need to consider to protect their own interests. On the other hand, from a legislative and law enforcement perspective, it is necessary to study the development of legal provisions binding the seller and supervise the seller in performing the responsibility of bank guarantee in the housing purchase and sale transaction relationship as well as the model contract as a basis for eliminating risks in this transaction relationship in order to protect Protection of the rights of the buyer - the weak party in the contractual relationship. Warning home buyers of risks and applying modern forms of guarantee and new technology will help create a transparent, safe and fair transaction environment for all parties involved in the transaction buy and sell housing in the future In this article, the author has not approached and researched, which is the basis for further research in the next article. At the same time, promoting the development of guarantees in housing transactions will bring many benefits to both buyers, sellers and the real estate market in general in the digital economy of the future.

Funding: This research received no external funding.

Conflicts of Interest: The authors declare no conflict of interest.

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