



OFF-PLAN PROPERTY SALES: A COMPARISON STUDY OF VIETNAM'S AND DUBAI (UAE)'S LEGAL FRAMEWORK

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Abstract:

Off-plan property sales offer various attractive forms of property transactions, which have grown rapidly in popularity worldwide. In this context, in Dubai, the second largest emirate of the United Arab Emirates (UAE), and Vietnam, the off-plan property market has also been developing and attracting not only local investors but foreigners all around the world. However, due to its nature, which is available for purchase before it has been constructed, off-plan property sales lead to many potential risks involved to both sellers and buyers. Therefore, to protect the interests of the parties as well as stabilize the real estate market, it is necessary for each country or region to develop a legal framework governing this transaction. Within the scope of the article, the author focuses on analyzing regulations on off-plan property sales in Vietnam and the Emirate of Dubai governing requirements to engage in off-plan property sales, rights and obligations of the developer and buyer, and payment in off-plan property sales; comparing and

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contrasting those of these two legal systems to show similarities and differences, thereby suggesting some recommendations for Vietnam in improving the legal framework for off-plan property sales.

Keywords: off-plan property, off-plan property sales, Vietnam, Dubai, legal framework

1. Introduction

Off-plan property has become popular around the world since the second half of 20th century, in which off-plan property refers to property which is available to purchase under its construction in 1954 in Hong Kongⁱⁱ. Around the 1960s, however, it was less common due to a deterioration of cash flow among real property developers in this region. Since the 1970s and 1980s, facing the population growth associated with high demand for housing, along with a shortage of capital, many projects in major cities in Europe and North America have also begun to deploy off-plan properties. By the end of the 20th century and the beginning of the 21st century, this type of property has exploded strongly in countries and regions such as Dubai (UAE), China, and Singapore.ⁱⁱⁱ With advantageous features of affordability and flexible payment plans, off-plan property sales have attracted a large number of buyers/investors in the real estate sector. For developers, it is considered an alternative means of financing.

Dubai is one of the seven emirates of the United Arab Emirates (UAE) and an oil-dependent country. However, its real estate sector makes the highest contribution to the UAE's GDP among non-oil industries, and this country is a leading real estate market in promoting the development of off-plan projects. In particular, it can be seen that in recent years, the off-property market in this region has gone bust. According to the Dubai Land Department's Report, in 2020, a total of more than 41,000 property transactions were made, of which off-plan sales accounted for 45.37%; in 2021, the number of real estate transactions reached 16,890 transactions.^{iv} By 2023, Dubai saw a sharp increase in off-plan property transactions in residential units, with 68,783 transactions – up 59.4% (43,151 transactions) on 2022, of which 57% of those in Dubai were in the price range of AED 500,000 to AED 2 million, demonstrating the city's appeal to investors looking for sustainable real estate.^v In the first half of 2024, off-plan property sales reached AED 37.4 billion (about USD 10.2 billion), making up 32% of all sales transactions. This number is

ⁱⁱ Barbara Y.P. Leung & Eddie C.M. Hui, Pricing of Pre-Sale Properties with Construction Uncertainties, in: Khosrowshahi, F (Ed.), 21st Annual ARCOM Conference, University of London. Association of Researchers in Construction Management 2005, Vol. 1, 277-86.

ⁱⁱⁱ B. Leung, E. Hui & B. Seabrooke, Risk Transfer of Presale Properties and The Construction of a Forward Property Price Index, Pacific Rim Property Research Journal 13 (2007), p.194-195.

^{iv} Robin Vanneste, The Price Evolution of Off-plan Properties in Dubai: An Analysis of Risk Factors Contributing to Abnormal Returns, Lucerne University of Applied Sciences and Arts 2022, p.15.

^v Staff Writer, Dubai's real estate market thrives with 38% growth in off-plan transactions in Q2, <https://www.arabianbusiness.com/industries/real-estate/dubais-real-estate-market-thrives-with-38-growth-in-off-plan-transactions-in-q2> (last accessed 9 Jan 2025).

5% higher than it was in the first quarter of 2023. Due to a consistent influx of new inhabitants, demand for off-plan developments continues to outpace supply, with around 48,000 new apartments introduced in the first half of the year.^{vi} Obviously, one of the factors contributing to the development of the off-plan property market in this Emirate is the strong and effective legal framework in Dubai's legislation system.

In Vietnam, off-plan property has also become popular in the real estate market. The past decade has witnessed extremely rapid urbanization in Vietnam's major cities, leading to a sharp increase in housing demand. As predicted by the Ministry of Construction, by 2030, the urban population ratio will increase to 45%, compared to 40% in 2020; so, it is estimated that 70 million square meter of urban housing must be supplemented.^{vii} While the house price to income ratio in Vietnam is among Southeast Asia's highest at 22,8%, increasing by 27% since 2014. That means owning a home has become that much more challenging.^{viii} Therefore, the emergence of off-plan property, with the advantages of affordability and flexible payment plans, has solved such housing problems to some extent. According to Announcement No. 165/TC-BXD dated August 13, 2024 of the Ministry of Construction, in Q2 of 2024, there were 50 projects with about 13,167 units, the number of projects eligible for off-plan sales was 131.58% compared to the first quarter of 2024 and 106.38% compared to the same period in 2023, specifically, in the North there were 17, 20 and 13 projects in the North, Central and South respectively.^{ix} It can be seen that the off-plan property market is experiencing its growth momentum. The off-plan property sales, however, pose many risks to customers, because in reality, there are many cases where developers have used this transaction to defraud and appropriate assets, or illegally mobilize capital, or delay handover according to schedule, etc.^x In this context, the establishment and completion of a legal framework to govern off-plan property transactions to create a healthy and safe real estate market plays a very important role.

From the above analysis, it can be seen that Vietnam and Dubai are countries and regions with similarities in the development of the real estate market in general and the off-plan market in particular. Therefore, within the scope of this article, the author focuses

^{vi} Rameen Hamdoon, Off Plan Dubai- why is it such a booming market?, <https://www.livingascot.com/en/blogs/off-plan-dubai/off-plan-dubai-why-is-it-such-a-booming-market> (last accessed 10 Jan 2025).

^{vii} National Institute for Finance, Nhu cầu nhà ở tiếp tục tăng trong thập kỷ tới, https://mof.gov.vn/webcenter/portal/vclvcstc/pages_r/l/chi-tiet-tin?dDocName=MOFUCM187787 (last accessed 12 Jan 2025).

^{viii} Dang Nguyen & Viet Duc, Widening housing price-income gap strains affordability even for top earners, <https://e.vnexpress.net/news/business/data-speaks/widening-housing-price-income-gap-strains-affordability-even-for-top-earners-4810649.html#:~:text=The%20house%20price%20to%20income,to%20living%20cost%20database%20Numbeo> (last accessed 11 Jan 2025).

^{ix} Ministry of Construction, Announcement No. 165/TC-BXD of the Ministry of Construction on announcement of information on housing and real estate market in Q2 2024, Hanoi 2024.

^x Hoang Viet Trung, The Law on off-plan housing business from practical implementation in Ho Chi Minh City, Hanoi Law University 2022, p.59.

on analyzing the provisions of the Law on Property Business 2023 on off-plan property sales, and at the same time compares and contrasts with Dubai's legislation system. On that basis, a number of recommendations are made to contribute to improving Vietnam's legal framework on the off-plan property business.

2. Off-plan property sales: their inherent risks and advantages

Since its appearance on the real estate market, there have been many views from researchers on off-plan property. Off-plan property refers to property that is purchased before it is completed.^{xi} The Department of Mines, Industry Regulation and Safety, Government of Western Australia (2014)^{xii} notes that:

"Buying "off-the-plan" can mean many things but generally involves signing a contract with a developer before the developer has obtained final approval to subdivide land that is being purchased or, in the case of a building, before building has commenced or been completed."

Or, according to Robin Vanneste, off-plan property means property that is still under construction, and it is considered a part of the future housing supply^{xiii}. Regarding off-plan, the developer commits to delivering the product in due time with the payment plan as prescribed in the legal framework. In Vietnam, according to the provisions of civil law, off-plan assets include assets that have not yet been formed, and assets that have been formed, but the ownership of those assets is established after the time of the transaction.^{xiv} In the field of property business, the Law on Property Business 2023 stipulates:

"Off-plan housing or building means any housing or building which is under construction or has not yet undergone acceptance testing in accordance with regulations of the Construction Law."

Thus, despite many different impressions, the common point of these opinions referring to off-plan property is that the property does not yet exist, is not yet completed, or has not yet been put into use. It can be understood that off-plan property refers to property that is in the process of investment and construction and has not been accepted for use at the time of the transaction. And, off-plan property sales are used to describe

^{xi} Isthmus Partners, Off-plan Development: What now for Off-plan Sales?, in: Kirk Kimaru Katwa & Luke M. Obala (eds), CTU in Prague, journal Business & IT 2023, p.3.

^{xii} Department of Mines Industry Regulation and Safety, Buying land or property off the – plan, <https://www.consumerprotection.wa.gov.au/buying-property-plan> (last accessed 12 Jan 2025).

^{xiii} Robin Vanneste, note 5, p. 13.

^{xiv} Civil Code 2015 of Vietnam, Clause 2 Article 108.

the practice of a developer entering into an agreement with a buyer for future delivery of goods.

The emergence of off-plan property as well as off-plan property transactions are of great significance in bringing benefits to the parties involved in the transaction, at the same time contributing to the development of the economy. Specifically:

a. For project developers

Off-plan property sales bring developers the following benefits:

- **Alternative financing method:** It can be seen that developing real estate projects is a risky activity which requires a large sum of capital in the construction period.^{xv} Therefore, most of real estate developers, besides their equity, use other financial sources to meet capital requirements. Before the emergence of off-plan, developers have mainly applied financing ways such as real estate investment trusts, loans from credit institutions, or forms of co-operations, issuance of securizations; however, the problem with these financing ways is that the interest cost can get high and restrictions may be imposed due to the risky nature of the real estate development. Together with the growth of the global economy and housing demands, off-plan property sales emerged and are considered a form of capital mobilization through customers paying in advance for property purchases according to the project schedule. This is a more beneficial form of capital mobilization for developers because it does not require paying interest like borrowing from credit institutions. Therefore, off-plan property sales offer developers an alternate source of funding by giving them the opportunity to raise money from prospective purchasers of the units in their planned construction.^{xvi} Thereby, helping to clear and firmly establish capital sources, ensuring sustainable real estate market development, and promoting economic development.
- **Marketing and reputation:** The ability to market the project to potential customers from the start of project construction to its completion through off-plan sales is another significant advantage of real estate developers.^{xvii} Early sales demonstrate market demand, improving the project's credibility and attracting additional investors/buyers.

However, suppose the promised quality in off-plan sales is not as good as the delivered quality. In that case, the advantage of early marketing can also quickly become a problem for developers, negatively affecting their reputation. On the other hand, the developers' reputation may be enhanced when the project is delivered in accordance with the plans and specifications. Gaining a better understanding of how consumers evaluate developers would allow them to increase sales and reputation, both of which are very

^{xv} Rayan AbdulJabbar, Economic Assessment of Off-plan Real-estate policy in Saudi Arabia – 2009-2019, International Business Management 2021, p. 48.

^{xvi} Okal, Investigation into the Strategies for Commercial Real Estate Development Financing in Kenya, in: Robin Vanneste (eds), Lucerne University of Applied Sciences and Arts 2022, p.20.

^{xvii} Robin Vanneste, note 5, p.23.

important in today's connected world, where potential purchasers can readily obtain reputation and ratings.^{xviii}

b. For buyers/investors

By engaging in off-plan sales, the buyer/investor will enjoy several profits, as follows:

- **Affordability:** Due to the risky nature, off-plan properties are typically priced lower than completed units, offering buyers a chance to secure a property at an attractive rate. By affordable pricing, it is easier for buyers to own properties, and for developers to raise funds from buyers. Additionally, investors buying off-plan properties often benefit from price appreciation as the project nears completion. Because the property will have commanded full market value by the time it is finished, the earlier one invests, the greater the chance of robust capital gain. To summarise, off-plan properties are typically bought at a lower cost than their true value, which attracts real estate investors.
- **Flexible payment plan:** when buying off-plan properties, customers do not have to pay the entire purchase price at the time of transaction, but can pay in instalments according to the project progress. For instance, in Vietnam, the first payment, including deposits, must not exceed 30% of the contract value or purchasing price; the subsequent instalments must be consistent with the construction progress, but the total must not exceed 70% of the contract value in any case of property delivery. In case the buyer/investor fails to be issued the ownership certificate, the developer is not allowed to receive over 95% of the contract value.^{xix} This helps attract many customers to choose this transaction. As a result, it contributes significantly to the development of the real estate market in general and the off-plan market in particular, as well as to the entire socio-economic system.

c. For the economy

Property in general and off-plan property in particular play a vital role in promoting the development of the real estate market, one of the pillars of the national economy. In Vietnam, with a contribution of about 10% to the total GDP of the country in recent years, the real estate market, including off-plan, has become a crucial economic sector.^{xx} By means of off-plan property sales, the developers are allowed to mobilize capital from customers to implement property projects, which helps attract investment and other resources into the real estate sector, creating fixed assets for the economy and promoting

^{xviii} Andrew, M., & Larceneux, F., The role of emotion in a housing purchase: An empirical analysis of the anatomy of satisfaction from off-plan apartment purchases in France, in: Robin Vanneste (eds), Lucerne University of Applied Sciences and Arts 2022, p. 24.

^{xix} Law on Property Business 2023 of Vietnam, Article 25.

^{xx} Tạp chí Kinh tế và Dự báo, Vai trò của thị trường bất động sản trong nền kinh tế và giải pháp ổn định thị trường tại Việt Nam, <https://tapchitaichinh.vn/vai-tro-cua-thi-truong-bat-dong-san-trong-nen-kinh-te-va-giai-phap-on-dinh-thi-truong-tai-viet-nam.html> (last accessed 10 January 2025).

the development of other economic sectors such as financial markets, construction, labor, etc., and meeting housing demand, urban development, and tourism, etc. All of these directly affect the development of the country's socio-economic development in general. Nevertheless, more opportunities come with different risks. Off-plan property sales also come with inherent risks, including delay in completion, changes in market conditions, and potential issues with the developer. As follows:

- Delay in completion. A major drawback of purchasing off-plan is that it may cause the project's construction to be halted or delayed. Unfortunately, the original construction timeline is not always followed by developers. Either internal (e.g. the developer's failure to obtain the necessary building licenses, the developer's bankruptcy, etc.) or external (e.g. the COVID-19 pandemic, act of God,...) causes can directly affect the project schedule. Delaying the project's completion date affects the expected yield because it delays future rental income and utilization.
- Changes in market conditions: Fluctuations in the market, where off-plan property prices may increase or decrease as a result of things like governmental regulations, interest rate fluctuations, and economic conditions, can have an impact on off-plan real estate investments. This can create uncertainty for buyers/investors, whether they are looking for their own home or considering investment opportunities. For buyers, market fluctuations may impact affordability and the long-term value of their investment. While investors may face uncertainty regarding the potential returns on their investment and the stability of the real estate market. When considering purchasing an off-plan property, it's important to gather information from reliable sources and take into account your own financial situation and goals.
- Developer insolvency: Engaging in off-plan sales exposes buyers to the risk of developer insolvency, where developers may face financial difficulties or go bankrupt during construction, leading to failure to complete the project or inability to deliver properties. This can happen due to various reasons, such as mismanagement of funds, economic downturns or unforeseen challenges in the construction process, which can disrupt project timelines, compromise construction quality or result in project abandonment, potentially leading to financial losses for investors as your investment may not yield the expected returns or could depreciate in value.

With the above-mentioned advantages and risks of off-plan property sales, therefore, building a strong legal framework governing this transaction is required for any country to enhance trust in off-plan property transactions while fostering sustainable growth in real estate markets.

3. Regulations in Vietnam and Dubai that govern off-plan property sales

Although off-plan property purchase brings benefits to both the developer and the customer, in which the developer can raise capital from the customer and the customer can buy property at a lower cost than ready property, this transaction has certain risks in

case the developer is incapable of completing his project, or the project is delayed, etc.; on the customer's side, there is not enough financial capacity to carry out the transaction. Therefore, Vietnam and Dubai's legal frameworks have both issued regulations to govern this transaction, specifically as follows:

- Requirements to engage in off-plan property sales

Based on the risks that may occur when conducting off-plan property transactions for both developers and customers, the conditions for property, specifically off-plan houses and construction works to be put on the market, have been specified in detail by Vietnamese law, specifically the Law on Property Business 2023 in Article 24, as follows:

Firstly, the property has been commenced in accordance with the provisions of the construction law. This is one of the new conditions stipulated in Clause 1, Article 24 of the Law on Property Business 2023 to ensure that the property project has been actually built, creating an important premise to complete and hand over the property on schedule to customers as well as partly proving the use of the developer's deposits from customers for the right purpose.^{xxi}

Secondly, A property project must have one of the following documents on land use rights, including: Land allocation decision; Land lease decision and contract for lease of land use rights as prescribed by the Land Law; Decision on approval of land repurposing; Certificate of land use rights; dd) Certificate of housing ownership and residential land use rights; Certificate of land use rights and ownership of housing and other property on land; Another certificate of land use rights and ownership of property on land as prescribed by the Land Law.

Thirdly, Property projects must obtain the following construction documents: Permit to build the housing or building and application for such permit, in case such permit is required in accordance with regulations of the Construction Law; Notice of construction commencement date and design dossier of the housing or building in case the building permit is not required in accordance with regulations of the Construction Law; and Documents on the acceptance testing of finished infrastructure facilities according to the project schedule, as prescribed by the Construction Law; in case of an apartment of the apartment building or building used for multiple purposes, including for residence, documentary evidences of the acceptance testing of finished foundation in accordance with regulations of the Construction Law.

Compared to Law on Property Business 2014, Law on Property Business 2023 has been changed by adding the condition that a *"Notice of commencement of construction of housing and construction works"* is required to send to the local state management agency for construction at least 03 working days before the commencement date; and a complete *"design dossier for construction of housing and construction works"* must be available according to the provisions of the construction law. It can be seen that these are very necessary conditions to control the developer's deliberate violations during the construction, affecting the rights of customers.

^{xxi} Article 107 of Construction Law 2014 (amended, supplemented in 2020).

Fourth, the property must be part of a project approved by the competent authority as prescribed and the approved project content is called for the purpose of investing in the property construction for sales. This is a new point of the Law on Property Business 2023 to ensure the project legality.

Fifth, off-plan property must satisfy the conditions specified in Points b, c, d, dd Clause 1, Points a and c Clause 2 and Clause 3 Article 14 of the Law on Property Business 2023, specifically: i) It is not under any dispute over the rights to use land associated with the housing or building, or over the ownership of the housing or building to be put into use, which has been noticed, handled and is under consideration by a competent authority. If the housing or building is involved in a dispute, the dispute has been completely resolved under a sentence, decision or judgment which has taken effect; ii) It is not distrained to serve judgment enforcement; iii) It is not banned from trading as prescribed by law; iv) It is not suspended from purchase as prescribed by law; v) The project meets the conditions set out in Article 11 of the Law on Property Business 2023; vi) The project developer has fulfilled its financial obligations regarding land, including land use fees, rents, and land-related taxes, fees, and charges (if any) to the State as prescribed; and vii) the conditions on construction floor area in off-plan construction works must be satisfied.

Sixth, information on properties and property projects to be put on the market has been publicly disclosed under Article 6 of the Law on Property Business 2023 on the housing and real estate market information system and on the website of the real estate enterprise.

Next to requirements for off-plan property to be purchased, Vietnam's law also regulates those for the off-plan developers. In order to ensure the project schedule, quality, as well as protect the legitimate interests of developers and buyers/investors, according to both Vietnam and Dubai laws, the developer is required to meet certain requirements to implement the off-plan project.

In Vietnam, a real estate developer shall be required to meet the requirements of legal status and financial capacity, specifically:

"a) It is not subject to any court's judgment or decision, or a competent authority's decision, on prohibition or suspension of real estate business; b) It must maintain safe ratios of outstanding credit balance and outstanding bonds to the owner's equity; c) The real estate enterprise approving a real estate project must ensure that its owner's equity shall not be lower than 20% of total investment of that project, if the area of land used is less than 20 ha, or 15% of total investment of that project, if the area of land used is 20 ha or higher, and that it is capable of raising capital for implementing that project.[...]."

These provisions are necessary to ensure that real estate transactions, specifically off-plan sales, established and implemented by the developer, have legal value; are not invalidated because the developer is in a state of temporary suspension, cessation of operations, or termination of business, which harms the legitimate rights and interests of

the parties involved in the transaction; and at the same time, ensure that off-plan developers have sufficient financial capacity to complete the project as committed, thereby ensuring the rights of buyers/investors engaging in the off-plan sales and building a healthy and sustainable real estate market.

Thus, it is noted that the Law on Property Business 2023 has strict regulations on the conditions for off-plan property to be put on the market; and only when the conditions specified in Article 24 are fully met, it is allowed to be put into business. However, in some cases, although the conditions for doing business in future real estate have not been met, such as failure to be granted an investment certificate by a competent authority, or failure to obtain a decision on land allocation, etc., the developer has still conducted the transaction, signed a sales contract and received money from the buyer, leading to the situation where the developer failed to carry out the project, and cannot hand over the real estate according to the signed contract to the buyer, which seriously affects the legitimate rights and interests of the buyer. This is a violation of the law on real estate business in general and off-plan property sales in particular. Typically, according to Judgment No. 233/2023/DS-PT on the "dispute over the Promise Of Off-plan Purchase And Sale Agreement" between the plaintiff, Mrs. Le Thi Kim O, and the defendant, Company F, resolved by the People's Court of Dong Nai province. Thereby, the plaintiff filed a lawsuit requesting the court to cancel the signed Promise Of Off-plan Purchase And Sale Agreement and request the defendant to return all the money the plaintiff had paid and pay the fine. Specifically, on May 25, 2018, Mrs. O and Company F signed the Promise of Off-plan Purchase and Sale Agreement with a total value of VND 4,881,530,400. Mrs. O paid Company F many times with a total amount of VND 2,440,755,200 (equivalent to 50% of the contract value). However, during the agreement implementation from February 2020, Mrs. O discovered that Company F had not yet obtained the land allocation decision from the competent authority to implement the project. During the settlement of the case, the People's Court of Dong Nai Province determined that Company F's actions were acts of trading in off-plan property without meeting the conditions prescribed by the law. Therefore, the Court declared the Promise of Off-plan Purchase and Sale Agreement between Mrs. O and Company F null and void, and at the same time forced Company F to return the amount received from Mrs. O and pay compensation for damages due to breach of contract.^{xxii} It can be seen that despite strict regulations on requirements for off-plan property sales, to protect the rights of the buyer, it is necessary to develop and implement effective control measures for both the property and developers.

Similarly, the legislation system of Dubai has set forth specific conditions for developers. Specifically, Law No. 13 of 2008 Regulating the Interim Property Register in the Emirate of Dubai stipulates as follows:^{xxiii}

^{xxii} Judgement No. 233/2023/DS-PT on the "dispute over the Promise of Off-plan Purchase and Sale Agreement by the People's Court of Dong Nai province.
<https://congbobanan.toaan.gov.vn/2ta1409455t1cvn/chi-tiet-ban-an>

^{xxiii} Law No. (13) of 2008 Regulating the Interim Property Register in the Emirate of Dubai

First, the developer is required to take possession of land where the project will be implemented and approval from the competent authorities in the Emirate.^{xxiv}

Second, the developer, who disposes of off-plan property, is obliged to register with the Real Estate Regulatory Authority (RERA) under the Dubai Land Department.

Third, all off-plan property transactions must be registered in the Interim Property Register. Any sale of off-plan property will be void unless entered in that Register. After the project is completed, the developer must register it in the Property Register managed by the Ministry of Lands; and the sold property will be registered in the name of the purchaser if they have fulfilled their contractual obligations according to the procedures issued by the Dubai Land Department.

In addition, the legislator in the Emirate of Dubai, in the Real Estate Development Guarantee Accounts Law, stipulated in Article (6) that:

"The developer wishing to sell units on the map must submit a request to the department to open a guarantee account, and the request must be attached to the following documents:

- *Dubai Chamber of Commerce and Industry Membership Certificate.*
- *Commercial license.*
- *Certificate of ownership of the land to be developed.*
- *A copy of the contract concluded between the main developer and the sub-developer.*
- *Architectural designs and preliminary engineering plans approved by the competent authorities and the main developer.*
- *A financial statement estimating the project's costs and revenues, certified by a certified legal auditor.*
- *A commitment from the sub-developer to commence construction work on the project after obtaining the approval of the main developer to sell off-plan.*
- *Sample sales contract between developer and buyer."*

Thus, it can be seen that Dubai's legislation system focuses on controlling the off-plan property sales through a property registration and management system since the project has not yet been formed until it is completed. This registration aims to ensure strict supervision of the developer and customer's financial capacity, the project progress and compliance with the laws governing the off-plan property transaction. In Vietnam, up to now, although the Ministry of Construction has issued Circular No. 44/2022/ND-CP on the construction, management and use of the housing and real estate market information system effective from August 15, 2022, accordingly, a portal of the housing and real estate market information system has been built, it only focuses on posting information related to the market, and there is no official property registration and management system to monitor and control transactions in the real estate market.

4. Rights and obligations of the developer and buyer in off-plan property sales

To ensure validity of off-plan property transactions, rights and interests of the parties involved, and healthy and safe development of the real estate market in general and the

^{xxiv} Law No. (13) of 2008 Regulating the Interim Property Register in the Emirate of Dubai, Article 4.

off-plan property market in particular, regulations on both parties' rights and obligations play a decisive role. Therefore, both Vietnam and Dubai have issued very detailed regulations on this issue. And, both legal systems have general and specific regulations, as follows:

- **Rights and obligations of the developer:**

- The developer is responsible for ensuring that the off-plan project is constructed in accordance with the approved plan, specifications and quality standards. The completed project must meet the quality standards advertised to the customer.
- The developer is obliged to maintain transparency and openness with the customer throughout the project implementation process, consisting of providing regular updates on the project progress, promptly responding to the customer's questions and providing information related to the project, such as any changes or amendments to the plan, approvals or timelines.
- The developer is responsible for complying with all obligations as agreed with the customer, including commitments on warranty, handover of the project, etc.
- The developer has the right to request the customer to pay under the committed schedule and other obligations set forth in the contract between the two parties.
- The developer has the right to terminate the transaction and request the customer to compensate for damages in case of any violation of the committed obligations or the law.

- **Rights and obligations of the buyer:**

In the off-plan sales relationship, the main rights and obligations of the customer include:

- Request the developer to hand over the off-plan property according to the schedule, quality as committed and other rights that the two parties have agreed in the sale and purchase contract;
- Request the developer to complete the purchase and sale procedures within the agreed time limit;
- Be obliged to pay in full for the off-plan property price according to the schedule, time limit and method as agreed.

It can be stated that the common rights and obligations of the off-plan property developer and customer, as stipulated by both legal frameworks, are the factors that differ considerably between off-plan property sales and ready property sales.

In addition to the above common points, there are some certain differences in the rights and obligations of the parties in off-plan property sales. Specifically, regarding the responsibilities of the parties in case of non-compliance with their rights and obligations or inability to carry out the transaction: Currently, in Vietnam's legislation system, Decree No. 96/2024/ND-CP guiding the implementation of the Law on Property Business 2023 has issued a model contract on the purchase and sale of housing, which includes the

content of off-plan apartment purchase. Accordingly, the contract mentions handling contract violations. However, it is only applied to the developer's handover delay and the buyer's payment delay. As for some other behaviors of the parties that make it impossible to carry out the transaction, such as the developer committing a violation and being decided by a competent state agency to terminate the project or revoke the investment certificate, making it impossible for the developer to continue implementing the project and handing over the property on schedule to the buyer, etc., there are currently no specific regulations, which greatly affects the buyer's interests. For example, Van Anh Construction Investment Consulting Joint Stock Company, located in Ward 15, Tan Binh District, Ho Chi Minh City, the developer of the My Hanh Bac Residential Area project in My Hanh Bac Commune, Duc Hoa District, Long An Province^{xxv}, based on the investment policy of Long An People's Committee in 2019 approving Van Anh Company as the developer of My Hanh Bac residential area project, they signed a principle contract agreeing to transfer land use rights in this project at a price of more than 800 million VND per 80m² plot. According to this contract, the developer is expected to hand over the land in the fourth quarter of 2022. The buyer has paid the developer. In November 2022, the buyer was sent a notice by Van Anh Company that, due to the COVID-19 pandemic, the land handover was postponed to the fourth quarter of 2023. And then the project was terminated by Long An province. In that situation, the buyers went to the company's headquarters many times, trying to contact the company's leaders but received no response. They then filed a complaint with the Long An Province Police to request a resolution, but the case has not yet been resolved. Thus, it can be seen that in this case, the lack of regulations on the developer's responsibility in the event of failure to hand over the property due to the project termination has created a loophole in the legal system, creating conditions for the developer to commit violations, greatly affecting the rights and legitimate interests of customers buying off-plan property. In addition, although customers buying property in this case can request the police or the court to resolve the matter, the resolution process is often lengthy, and the possibility of getting the money back is not high because the developer has become insolvent.

Meanwhile, Dubai's legal framework stipulates quite specific regulations on this issue. In addition to the case where the developer fails to hand over on time as agreed, the buyer can terminate the contract and request the court to force the developer to compensate for damages according to UAE Civil Law^{xxvi}, it is also stipulated that in the case where the developer has inability to carry out the project due to force majeure or the project is canceled according to the decision of RERA (Real Estate Regulatory Authority), the developer is obliged to refund the entire amount received from the buyer. The entire amount is deducted from the Escrow Account opened by the project developer according

^{xxv} Son Lam, Chết đứng" khi hay tin tình chấm dứt dự án khu dân cư, <https://tuoitre.vn/chet-dung-khi-hay-tin-tinh-cham-dut-du-an-khu-dan-cu-20231012010325557.htm> (last accessed 12 Oct 2023).

^{xxvi} Fotis Law Firm, Off-Plan Real Estate Contract In Dubai: All things you need to know, <https://fotislaw.com/lawtify/termination-of-off-plan-real-estate-contract-in-dubai/> (last accessed 19 Apr 2022).

to the provisions of Law No. (8) of 2007 on Escrow Accounts in Real Estate Development in the Emirate of Dubai, under the management of the Escrow Agent and Dubai Land Department.

For the buyer, in case of any violation of the contractual obligations, the process specified in Article 11 of Law No. 19 of 2017, amending Law No. 13 of 2008, must be followed^{xxvii}: The developer must send a notice to Dubai Land Department on the buyer's non-compliance as prescribed, then Dubai Land Department is responsible for assessing and determining the buyer's non-compliance with the sales contract and sending a notice to the buyer requesting the buyer to remedy within 30 days. If any failure to remedy in such period or the two parties fail to reach an agreement, Dubai Land Department will issue a statement in favor of the developer, confirming that the developer has complied with the process, and confirming the project's construction completion rate, in accordance with the standards and regulations of RERA. Based on the completion rate, the developer can take measures against the buyer without a court order or arbitration.^{xxviii}

The clear and detailed regulations on responsibilities of the parties in each case of contract violation as mentioned above ensure that the legitimate rights and interests of the parties are maximally protected when participating in this potentially risky transaction; at the same time, these regulations also have a deterrent nature, to ensure the parties' compliance with the law and the implementation of off-plan property transactions.

- **Payment in off-plan property sales**

Payment in off-plan property sales is a decisive issue in the implementation of this transaction. Therefore, the two legal frameworks stipulated their own strict regulations on this payment issue.

A. Payment in off-plan property sales under regulations in Vietnam

In Vietnam, the Law on Property Business in different periods, when regulating payment in off-plan property sales, has all focused on instalment payment to control this transaction, avoiding the case where the developer uses such payment for the wrong purpose, affecting the rights of the buyer. Accordingly, installment payment must be applied in the off-plan property sales: the first time not exceeding 30% of the contract value including the deposit, and the following times being consistent with the construction progress but the total amount does not exceed 70% of the contract value when the property has not been handed over to the buyer.^{xxix} In addition, to protect the customers' rights and increase the developers' responsibilities, Clause 3, Article 25 of the Law on Property Business 2023 inherited Article 57 of the Law on Property Business 2014,

^{xxvii} Law No. (19) of 2017 Amending Law No. (13) of 2008 Regulating the Interim Property Register in the Emirate of Dubai.

^{xxviii} Article (11) Law No. (19) of 2017 Amending Law No. (13) of 2008 Regulating the Interim Property Register in the Emirate of Dubai.

^{xxix} Law on Property Business 2023, Clause 1, Article 25.

which stipulates that the customer is allowed to retain a part of the contract value while waiting for the issuance of a Certificate of land use rights and ownership of assets attached to land, specifically:

"Total amount of payments made to the seller or landlord before a certificate of LURs and ownership of property on land is issued to the buyer or tenant-buyer as prescribed by the Land Law, shall not exceed 95% of the contract price. The remaining amount shall be paid when such certificate is issued to the buyer or tenant-buyer by a competent authority in accordance with regulations of the Land Law."

Although the Law on Property Business 2023 has made certain changes in the regulations on payment in off-plan property sales to ensure rights, limit risks for buyers as well as avoid illegal capital mobilization and use, it currently lacks specific regulations on controlling the capital flow that the developers mobilize through off-plan property transactions in order that the money is appropriately used to ensure the project progress and protect buyers.^{xxx} When making off-plan property transactions, the buyer pays money to the developer but has not yet received the actual property, so the risk level is very high. In fact, in some cases, after receiving capital mobilized from the buyer, the developer used it to implement many other projects or used it for other purposes, resulting in the developer no longer being able to continue implementing the project for on-time delivery to the buyer, or not being able to return the money to the buyer, causing great disadvantages for property buyers. A typical case occurred at Vietnam Land Investment Corporation (VINALAND), which conducted off-plan housing transactions at the Vinaland Project in District 7, Ho Chi Minh City, with a commitment to hand over apartments within 60 months. The amount of money that VINALAND collected from customers was up to tens of billions of VND. However, this Company used such money for other private purposes of the company, such as paying for premises rent, paying for capital contributions, etc. And when the deadline came, the project was still only "on paper", not implemented because the Company had not yet commenced the project. This was essentially a trick to circumvent the law to mobilize capital from hundreds of customers,^{xxxi} which caused great damage to customers because, in this case, they did not receive the house as agreed with the developer and had difficulty in demanding refunds because the entire mobilized amount was used by the developer for other purposes, and they were no longer able to repay the debt.

B. Payment in off-plan property sales under regulations in Dubai

While in Vietnam, the legal framework focuses on detailed regulations on payment progress, Dubai focuses on controlling the use of capital mobilized from off-plan

^{xxx} Phung Thi Phuong Thao, New points of the Law on Property Business 2023 on capital mobilization in real estate business, *Journal of Democracy and Law* 2024, p.63.

^{xxxi} Hoang Viet Trung, Capital mobilization and control of capital use by developers in off-plan housing business, *Journal of Democracy and Law* 2021, p.34-38.

property transactions to ensure customer rights protection. Accordingly, the law mandates the developer to open and maintain an escrow account for each off-plan project after submitting a request to open an escrow account to the Dubai Land Department. This escrow account will be opened according to a written agreement between the developer and the Escrow Agent - a bank or financial institution approved by the Dubai Land Department to manage the Escrow Account. Accordingly, all payments for off-plan property will be deposited into this Escrow Account, and funds will be released to the developer in stages as construction progresses after being certified by a qualified engineer or consultant.^{xxxii}

In addition, Dubai's legislation system also stipulates the conditions and responsibilities of the Escrow Agent to ensure safety for all off-plan transactions. Accordingly, the Escrow Agent must be a bank or financial institution that is qualified to manage the Escrow Account as prescribed by the Dubai Land Department and is entered into the Escrow Agent Register of the Dubai Land Department. In particular, the Escrow Agent must send Dubai Land Department regular reports on the cash inflows and outflows of the Escrow Account. At the same time, the Department also has the right to request the Escrow Agent to provide any information requested by the Department at any time and in any case, and can also check the reports and information provided by the Agent. The Escrow Agent must retain five percent (5%) of the total value of each Escrow Account after the developer receives the completion certificate. This retained amount will be returned to the developer after one (1) year from the date of property registration in the name of the buyer.

It should be mentioned that the legislator's goal in setting up the escrow account is to regulate the Dubai real estate market and to structure the procedures for building and establishing off-plan units in order to protect buyers' rights. Article (13) of the Dubai Real Estate Development Escrow Account Law stipulates that *"If the developer mortgages the project to obtain a loan from financing institutions or companies, these institutions and companies must deposit the loan amount in the escrow account to be disposed of in accordance with the provisions of this law."* It means that as long as the mortgage value is placed in the project's escrow account, the developer may mortgage real estate projects to secure a loan from banks or other legally permitted financing organizations, with the understanding that the deposited funds will be handled legally. Moreover, Article (16) of the same law states: *"No sums of money may be transferred from the escrow account to any other accounts."*

Thus, it is said that the Emirate of Dubai's Real Estate Development Escrow Account Law was precise enough to offer financial stability and shield buyers' rights from developers' deceit and manipulation.^{xxxiii} The buyer is further reassured by the escrow account that his funds will be secure and utilized only to finish the off-plan property project. Regarding the real estate developer, the escrow account ensures that he will have

^{xxxii} Law No. (8) of 2007 Concerning Escrow Accounts for Real Estate Development in the Emirate of Dubai.

^{xxxiii} Zainab Abd Al Ameer Daher & Raad Aday Hussein, Buyer Guarantees at the Stage of Concluding a Contract for the Sale of Real Estate Under Construction, *Journal of Ecohumanism* 2024, p.720-721.

enough cash on hand to finish the project, creating a secure and alluring investment climate.

From the above analysis, it can be seen that, regardless of the perspective, all regulations of the two legal systems aim at the same goal of protecting the legitimate rights and interests of property developers and buyers of off-plan, ensuring the healthy and stable development of the off-plan property market, thereby contributing to the country's economic growth.

4. Some recommendations to Vietnam for the improvement of regulations on off-plan property sales

In Vietnam, off-plan property sales are one of the forms of real estate business and contribute significantly to the development of the real estate market as well as the national economy. However, currently, the implementation of off-plan transactions in our country still faces many risks, and many violations occur, such as the developer's handover delay, inability to continue implementing the project, or illegal capital mobilization, capital usage, etc. One of the main reasons is that the current legal regulations governing this activity still have many shortcomings such as many regulations have been issued but are not really effective, and several issues have not been regulated by law. On the basis of a study on Vietnam and Dubai's legal frameworks on off-plan property sales, the author makes some recommendations to Vietnam for improvement of regulations on off-plan property business in general and off-plan property sales in particular, as follows:

Firstly, strengthen the mechanism to control off-plan property transactions through the establishment of a property registration system. Currently, Vietnam's legislation system lacks a mechanism related to the control of off-plan property transactions in general and off-plan property sales in particular, besides a number of conditions for off-plan property to be put into business. Therefore, many transactions are invalid, and disputes arise, which seriously affect the interests of all parties involved. According to regulations in Dubai, all off-plan property transactions must be registered in the Register under the control of Dubai Land Department; otherwise, they are considered invalid. This is a fairly effective measure by Dubai in controlling off-plan property transactions, helping to protect the interests of both developers and buyers of this risky asset. Vietnam can refer to this regulation of Dubai to build a system to register and manage all transactions related to property, including off-plan property, besides the current property information system built under Circular No. 04/2024/TT-BXD dated July 30, 2024 of the Ministry of Construction, to manage off-plan property transactions as a measure to minimize risks for these transactions.

Secondly, supplementing regulations on the basis for handling violations and responsibilities of the parties when violating contractual obligations. Currently, in Vietnam, the parties' responsibilities during the off-plan property transactions have been regulated in the model contract content for house purchase and sale, but it has only

focused on two cases: violation of payment obligation and handover delay; meanwhile, there are currently no regulations on the developer's responsibilities in case the developer commits a violation leading to his inability to continue implementing the project, or be terminated the project by the competent state agency or the investment certificate is revoked, causing the developer to be unable to hand over the property as agreed, which directly affect the rights and interests of the parties, especially the buyer in off-plan property transactions which poses many risks for the property buyer. Dubai's legal regulations, in addition to governing the developer's responsibility in case of delayed handover as scheduled, also clearly stipulates that in case the developer lack's ability to implement the project due to force majeure or the project is canceled by RERA (Real Estate Regulatory Agency), the developer must refund the entire amount received from the buyer. Accordingly, the author proposes to supplement regulations on the developer's responsibilities in case the developer of off-plan property projects is incapable of implementing the project due to a decision by a competent state agency to terminate the project, or the investment certificate is revoked, or there is insufficient financial capacity. It is suggested to learn lessons from Dubai's regulations mentioned above, in order to better protect the rights of the off-plan property buyer, thereby limiting disputes arising between developers and buyers, and at the same time stabilize the real estate market in general and the off-plan property market in particular.

Thirdly, developing a specific mechanism for controlling the capital usage mobilized by the developer from customers in off-plan property sales. One of the important responsibilities of developers in off-plan transactions for the purpose of raising capital is to use the capital for the right purpose. Article 4 of the Law on Property Business 2023 stipulates that real estate developers are responsible for:

"Use money received from the buyer or tenant-buyer to invest in the construction of the project, housing or building or its floor area to be sold or offered for lease purchase according to the agreed-upon purposes specified in the signed contract; comply with regulations of law on anti-money laundering."

Despite such provisions, the current law on property business lacks provisions on a mechanism to control the use of such capital, leading to the situation where the developer, after receiving money from buyers, misuses such amount, causing loss of capital. And the buyer will suffer from certain damages, including failure to buy off-plan property, as well as failure to recover money from the developer.^{xxxiv} Therefore, it is necessary to build a mechanism to control the use of capital that the developer mobilised by off-plan property sales.

Basing on above study on regulations on escrow accounts in off-plan property sales such as the developer's obligation to open an escrow account, Dubai Land Department's control to the escrow account and obligations of the Escrow Agent, it can

^{xxxiv} Hoang Viet Trung, note 32, p.34-38.

be seen that this is a very effective and strict measure in controlling the developer's cash flow because all activities are under the supervision of the Dubai Land Department. This avoids the developer's illegal use of capital mobilized from off-plan property sales, i.e., the fund is used for other purposes, not for project development. Thus, it is possible to ensure that the developer hands over the property on time as committed, avoiding disputes arising in this type of property transaction and ensuring the buyer and developer's rights.

5. Conclusion

Off-plan property sales are a very popular transaction on the real estate market today, not only in Vietnam but in other countries and regions around the world because of their benefits to project developers and buyers. However, due to the nature of "off-plan", the parties in this transaction face many risks in the process of building and completing real estate projects. Therefore, the legal framework must play a role in regulating this transaction. In the context of the booming real estate market in general and the off-plan market in particular, Vietnam's Law on Property Business 2023 has many new and progressive points in line with the market growth; however, there are still certain limitations. Therefore, in the process of improving the legal framework on property business in general and off-plan property sales in particular, it is necessary to compare and learn lessons from other countries, specifically the Emirate of Dubai, UAE - where the off-plan property market has been developing incredibly, to apply to Vietnam's legal framework to govern this transaction.

Conflict of Interest Statement

The author(s) declare no conflict of interest with respect to the research, authorship, or publication of this article. No financial or personal relationships with individuals or organizations exist that could inappropriately influence or bias the content of this work.

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