

DISCUSS ABOUT IMPROVING THE EFFECTIVENESS OF DISPUTE SETTLEMENT ON LAND USE RIGHT TRANSFER CONTRACT IN REAL ESTATE BUSINESS

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ABSTRACT:

From the strong development trend of investment and business activities related to land use rights in the current real estate business, it is possible to predict the strong attractiveness and tremendous development opportunities of this business field in the future. The land use rights trading market will become more exciting and a hot spot that attracts real estate investors. Besides the key factor which is the supply and demand of the market, the situation of disputes is also a factor to assess the growth of the market for land use rights. In order to create a stable business growth, the essential factor is the ability to resolve disputes arising. If the quality of dispute resolution is not improved, it will lead to disappointment in an unstable business market and business entities will not want to continue investing in this area. Not realizing the positive nature of dispute resolution will lead to negative reviews for the legal system and the market for land use rights is still unstable. Shortcomings of the system of legal regulations on dispute resolution of land use right transfer contracts need to be replaced by a system of strict binding regulations in terms of dispute settlement and binding procedures. all business entities.

Keywords: Contract of land use right transfer in real estate business, dispute resolution, advanced solution of dispute resolution.

1. Set the problem

Real estate business in Vietnam has many great opportunities to attract the attention of business investment, especially in real estate business of land, housing and business infrastructure development. This is one of the potential factors to promote the development of the real estate market. The number of real estate business transactions is constantly increasing, including business transactions related to land use rights which always occupy a large amount. The rapid increase in the number of business transactions of land use rights has become the cause of the growing popularity of land use rights transfer disputes, the number of cases of disputes over any

type of business contract Estate in general and the contract of land use right transfer in real estate business in particular account for a large proportion of other civil contract disputes. Accompanying the development of land use rights business in the context of the current real estate economy, land use right transfer contracts play an increasingly important role as a legal basis for rights and obligations between parties when conducting business transactions. In addition to the State's management policies and socio-economic conditions, the legal environment is a decisive factor to develop land use right transfer transactions. The reality of the court's dispute settlement shows that

the number of disputes related to land business transactions accounts for a large proportion. The cause of this situation is because the legal system still has some inappropriate regulations, there are still gaps for investors, organizations and business individuals, buyers can "circumvent the law". The perception of entities on legal regulations on land use right transfer contract is still not high. It is necessary to continue studying and completing solutions to improve the efficiency of dispute resolution of land use right transfer contracts in terms of law-making, guiding the implementation of laws and solutions on implementation organization coordination mechanism, to avoid too complicated and too much legal system related to land use right trading.

2. Characteristics of disputes over land use right transfer contracts according to the Law on Real Estate Business 2014

The Law on Real Estate Business in 2014 has more fully defined the content of real estate business activities compared to the previous. Accordingly, real estate business organizations and individuals invest capital to carry out construction, purchase and transfer activities to sell, transfer, lease, sublease, lease and purchase real estate, real estate brokerage services, real estate trading floor services, real estate consulting services or real estate management for profit purposes. Contract of land use right transfer in real estate business is not for purely civil transaction purpose but the purpose of land use right transfer contract is the profit gained from trading activities. The majority of cases of transferring land use rights in real estate business are aimed at implementing investment, production, business or infrastructure projects to transfer or sublease for the purpose of looking for profit. Thus, another feature of a dispute over a real estate business contract for a land use right is always associated with the purpose for the benefit of at least one of the parties to the dispute. The establishment of a civil contract in general and the parties towards different purposes and benefits, however, with a contract to transfer land use rights in real estate business, contracting is formed derived from the purpose of profit. This feature comes from the law of real estate business that has been legalized in Clause 1, Article 3, Law on Real Estate Business 2014: "Real estate business is capital investment to carry out construction activities. Construction, purchase, transfer or sale or

sale, lease, sublease, lease and purchase of real estate, real estate brokerage services, real estate transaction services, private services real estate or real estate management for profit purposes. The purpose of making a profit is considered a prerequisite of a land use right transfer contract in the real estate business. In fact, profits have been proven to attract organizations and individuals to invest in this business, contributing to boosting the real estate market in general and market for land use rights in particular developed.

Compared to the Law on Real Estate Business in 2006, the Law on Real Estate Business in 2014 had more regulations to expand the conditions of organizations and individuals conducting land use right transfer transactions in real estate business. The subject of a dispute on a real estate business contract for a land use right is the subject of a real estate business contract. Accordingly, for a contract of land use right transfer in real estate business, participants must be the owner of a real estate business when entering into a contract and the other may be the owner of the business, real estate or not. Organizations and individuals that meet business conditions in the form of enterprises and cooperatives and have legal capital in accordance with the Law on Real Estate Business in 2014 are entitled to transfer land use rights. The law also stipulates the expansion of the right to transfer land use rights to small and irregular real estate business households and individuals, but need to declare and pay taxes in accordance with the law.

Disputes over land use rights transfer contracts are considered the most common form of dispute over real estate business contracts. Disputes over land use right transfer contracts are conflicts, disagreements, conflicts between the parties on the improper or non-performance of rights and obligations in the contract of land use right transfer. The transfer of land use rights is a trigger point for development of real estate business activities, positively affecting other real estate trading markets. The law on real estate business is perfected with the conditions that the types of land are allowed to trade in land use rights. In addition to the conditions of land use rights without dispute, land use rights are not restricted to ensure judgment execution, during the land use term. Article 9 of the Law on Real Estate Business in 2014 revised the regulation of having legal documents proving the land use rights in

accordance with the law according to the Law on Real Estate Business in 2006 into a regulation with a certificate of rights. land use according to land law. In fact, the status of disputes over land use rights revolves around issues of inadequate land legal documents, the transfer of mortgaged land use rights, and disputes over land use rights contracts. Disputes related to land use right transfer transactions of project owners due to the policy of not implementing the compensation obligation have been advertised to sell projects for compensation, when there is not enough compensation money, the number of depositors advance without land as agreed. The risk of investors' capital is likely to lead to significant economic losses for the assignee, whereby the assignee does not receive the land and the deposit cannot be returned. In many cases, small-scale individuals and households doing real estate business do not regularly allocate land use rights in the form of handwritten papers. But when signing a transfer contract, the conditions for reallocation of land plots are not guaranteed or in the case of agricultural land signing a deposit certificate when not eligible for separation of land plots or transfer to residential land, will give rise to disputes between transferors and recipients of land use rights transfer. Concerning the practice of resolving disputes on real estate business contracts, another legal issue is raised by the legal provisions of the form of land use right transfer contracts. Real estate business law in 2014 stipulates: Real estate business contract must be made in writing; the notarization and authentication of contracts shall be agreed upon by the parties, except for contracts on purchase and sale, hire-purchase of houses and construction works, contracts on land use right transfer, and parties to households and individuals business is not large, not often must be notarized or authenticated. Thus, according to the provisions of the Law on Real Estate Business in 2014, the contract of land use right transfer must be notarized or certified when the business owner of the land use right is not an enterprise or real estate business cooperative. This is a difficult regulation for parties to transfer land use rights and practice of dispute settlement. Over the past time, disputes over land use right transfer contracts have increased in number, most of the contracts have been declared invalid due to violations of the form of the contract, although there are many cases between the parties assignment

always wishes to enter into and perform contracts. From practice of dispute settlement, the declaration of invalid contract must handle very difficult and complicated consequences. There are many cases where the transferee has built the project or transferred it to a third party, so the damage of the assignee is often very large. Therefore, the purpose of managing transactions as well as limiting disputes arises when regulations on contract forms have not been reached. Practices that require real estate business law must have new regulations to ensure the stability of business transactions on land use rights in real estate business and need to redefine cases of violations forms that do not lead to a contract being invalidated to bind the parties' responsibilities and rights when entering into a contract.

Law on land use right transfer in real estate business is a legal field with wide adjustment contents, the application of law on dispute settlement related to real estate business transactions in general and delivery land use rights business in particular is very complicated. Settlement of business contract disputes on land use rights is an important activity for the parties to find appropriate methods and ways to eliminate conflicts, disagreements, conflicts arising from contract disputes. In cases where the parties choose to settle disputes by court, the settlement of disputes over land use rights transfer contracts in real estate business is the basis for the land law system and real estate business law affirms an important role in today's social life. The contractual relationship of land use right transfer is associated with the huge economic interests of the parties, so it is very easy to dispute when there are conflicts of interest between the entities of the contract. When disputes arise, the parties often seek different ways to resolve disputes to protect their rights and interests. The current law has recognized many methods of settling land use right disputes, including negotiation, mediation, commercial arbitration and the Court. Each method of dispute resolution has different characteristics that create advantages and disadvantages of each method. Depending on the nature and extent of the contract dispute, and combined with the advantages and disadvantages and characteristics of each method of dispute settlement. Organizations and individuals can choose the most effective way of resolving disputes in case of a dispute they encounter.

3. Solutions to improve the efficiency of settling disputes on land use right transfer contracts in real estate business

Transfer of land use rights in real estate business is a field of business investment that brings a lot of profits but also many potential risks, the top concern of organizations and individuals is to find opportunities. The most effective way to resolve contract disputes. Therefore, studying to complete the solution to improve the effectiveness of land use right transfer contract settlement is an urgent requirement in the context of increasing disputes from this business transaction contract become popular.

- New models and mechanisms for implementing land use right disputes are implemented to streamline compliance with land use right transfer contracts. The real estate economy provides a new, larger context to apply and reshape the legal framework under which it is affected. The current law does not provide specific and adequate criteria to determine and pay attention to the duration of inspection, appraisal, research and land use and management issues. The operation and development of land-use business transactions will provide the most important aspects, which will explain how they are consistent with the applicability of the law. When the administrative mechanism, an inappropriate natural reciprocal is still in a leading position instead of a free economy mechanism, the application of law will be limited, a barrier to resolution real estate business disputes and for the promotion of solutions to organize the implementation of the law.

- Establish a mechanism for settling disputes on land use right contracts in real estate business to ensure the right to self-determination and freedom to conduct business in real estate economic fields. Completing the legal framework of land use right transfer contracts deriving from the specificity of the land law relations and the transfer of land use rights in relation to other legal areas such as the law of business real estate, business, trade, investment, foreign exchange management, tax policy.

- Develop legislation to settle disputes on land use right transfer contracts in real estate business which need to be consistent with the inevitable and objective development of a volatile and flexible real estate economy. The legal system of land use rights business and regulations on the mechanism

of dispute settlement for the previous economy, whether it is still suitable for the current stage of real estate business development. It can be pointed out that the current unrest in the market in terms of land use rights comes from the uncertainty of existing legal regulations, leading to many business entities taking advantage of that legal situation to avoid , reduce their obligations to business partners. It is necessary to ensure that law-making planning will catch up with the business practices and new fluctuations in the current land-use trading market.

- Improving the effectiveness of law to resolve disputes over land use right transfer contracts in real estate business must be placed in an organic relationship with perfecting the real estate business law system in general. Developing a law on dispute resolution should be based on the content of the legal basis, need to create the structure, space and scope, understand the economic conditions of the dispute, understand the aspects of contract terms and frameworks Contract is very important, is the first step of applying a dispute resolution law.

The market for land use rights is a risky economic market, which means successful or failed transactions, bad or good transactions are born anytime, anywhere and understand the law will help adapt to business environment. On the side of business investors, it is necessary to organize and guide the system of legal regulations on land business and real estate business. Mastering the legal regulations will help business owners solve psychological barriers when conducting land business investment transactions.

- Legal land information is an important element of the dispute resolution process, affecting the legal rights and interests of the litigant, so the competent authorities need to coordinate closely and support information supply support at the request of the procedural agency. One of the important principles of the real estate registration system needs to ensure the truth, objectivity, completeness and accuracy so as not to affect the dispute resolution process. Publicizing the legal status and this also helps the parties avoid risks when establishing and executing transactions because there is no adequate and accurate legal information source. Publicity and transparency are an important factor for real estate business activities in general and land use right transactions in particular to develop stability ■

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BÀN VỀ NÂNG CAO HIỆU QUẢ GIẢI QUYẾT TRANH CHẤP HỢP ĐỒNG CHUYỂN NHƯỢNG QUYỀN SỬ DỤNG ĐẤT TRONG KINH DOANH BẤT ĐỘNG SẢN

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TÓM TẮT:

Từ xu hướng phát triển mạnh mẽ của hoạt động đầu tư, kinh doanh liên quan đến quyền sử dụng đất trong kinh doanh bất động sản hiện nay, có thể dự báo sức hút mạnh mẽ và cơ hội phát triển to lớn của lĩnh vực kinh doanh này trong thời gian tới. Thị trường giao dịch quyền sử dụng đất sẽ chứng kiến sự sôi động hơn nữa, trở thành tâm điểm chú ý của giới đầu tư kinh doanh bất động sản. Bên cạnh yếu tố then chốt là nguồn cung cầu của thị trường, tình hình tranh chấp cũng là yếu tố đánh giá tăng trưởng của thị trường kinh doanh quyền sử dụng đất hiện nay. Để tạo ra sự tăng trưởng kinh doanh ổn định, yếu tố cần thiết là khả năng giải quyết tranh chấp phát sinh, khi chất lượng giải quyết tranh chấp không được cải thiện sẽ dẫn đến sự thất vọng về một thị trường kinh doanh bất ổn, chủ thể kinh doanh sẽ không muốn tiếp tục đầu tư vào lĩnh vực này. Không nhận thấy được tính tích cực hoạt động giải quyết tranh chấp sẽ dẫn đến những đánh giá tiêu cực đối với hệ thống pháp luật và thị trường kinh doanh đất đai vẫn đang tiềm ẩn nhiều rủi ro pháp lý. Những bất cập của hệ thống quy định pháp luật giải quyết tranh chấp hợp đồng chuyển nhượng quyền sử dụng đất cần được thay thế bằng hệ thống các quy định có tính ràng buộc chặt chẽ về mặt thủ tục giải quyết tranh chấp, ràng buộc được tất cả các chủ thể kinh doanh.

Từ khóa: Hợp đồng chuyển nhượng quyền sử dụng đất trong kinh doanh bất động sản, giải quyết tranh chấp, giải pháp nâng cao giải quyết tranh chấp.