

LAND APPRAISAL ACTIVITIES IN THE PROCESS OF LAND ALLOCATION FOR INVESTMENT PROJECTS

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Summary:

According to current law, to carry out these Investment projects using land, investors must go through the form of land allocation or land lease. However, currently due to the influence of many reasons such as the lack of legal mechanisms to monitor and strictly control land allocation activities for investors, in reality, many negative aspects have arisen. Within the scope of the article, the author analyzes legal regulations and the current status of law implementation on land allocation activities to implement investment projects, thereby pointing out the shortcomings and shortcomings and making some recommendations to contribute to perfecting the legal framework regulating this issue.

Keywords: valuation, land price, land allocation, investment

1.Problem statement

With the impact of the market economy, although land is a property owned by the entire people, there are still strong fluctuations in price and significant differences in land prices in each area depending on the needs and purposes of use of the subjects. In addition to being affected by the market economy, land prices also have a significant difference between land prices regulated by the State and market land prices due to the lack of transparency in the process of determining and appraising land prices, the updating and collection of land information in land appraisal is not complete and comprehensive, and the responsibility of participating in appraisal and deciding on land prices of state management agencies related to land has not been fully promoted, which leads to one-sided decisions on land prices that are not consistent with reality.

On the other hand, due to the independence in the appraisal and decision on land prices for the competent authority to allocate land for investment projects, Vietnamese law still has many loopholes, which are conditions for the emergence of illegal factors in the management and use of land funds, thereby lacking fairness and transparency in accessing land funds to implement investment projects of investors.

On that basis, the issue of perfecting the law for land valuation activities in land allocation for investment project implementation is an urgent issue, playing an important role in ensuring the effective and legal use of land funds, while ensuring uniformity in land valuation activities,

building appropriate land prices based on objective factors affecting the value of land use rights , eliminating the difference between official land prices and market prices.

2. Legal status of land valuation activities in land allocation for investment project implementation in Vietnam

Currently, the Department of Finance and the Department of Natural Resources and Environment are the two agencies responsible for land valuation to allocate land to investors for commercial housing construction investment projects. In which, the Department of Natural Resources and Environment establishes a valuation plan and organizes the implementation of specific land valuation; the Department of Finance, as the standing member of the Provincial Land Valuation Council, will appraise the land pricing plan established by the Department of Natural Resources and Environment. Valuation is an important step, determining the success of land allocation for commercial housing construction investment, and the Valuation Council also plays a pivotal role, greatly influencing the results of this activity.

The main task of the Valuation Council is to determine the floor price in the land use rights auction to allocate land for commercial housing construction investment projects; determine land prices without auction; determine compensation and site clearance prices to allocate land for project implementation.

China is a country that applies a land ownership regime that has many similarities with Vietnam. Author Luu Quoc Thai commented that the starting point and land policies of China and Vietnam do not have many significant differences (Luu Quoc Thai, 2009). In China, land users obtain land use rights through one of two methods: receiving land allocation or receiving land use rights transfer. For land used for residential areas, the maximum term of use is 70 years. If two or more entities want to use a plot of land, it must be done through an auction or invitation to bid (Ninh Thi Hien, 2017). With the regime of ownership of land by the entire people, it can be seen that the method of granting land use rights to investors to carry out commercial housing construction investment projects through auctions to receive land allocation is completely reasonable. Because, land use rights auction is an important factor in marketizing land use rights, in fact it has brought into play many positive points:

Firstly, through the land use rights auction, lawmakers want the land price assigned to investors to carry out commercial housing construction projects to be consistent with the market, or in other words, to ensure that the land price is equivalent to the land price on the transfer market;

Second, make the primary real estate market transparent through land use rights auctions;

Third, the land use rights auction also optimizes economic benefits for the State. Because investors who want to receive land use rights must offer the highest price to win the auction, then the State will grant them the land use rights that won the auction.

Fourth, land allocation through land use rights auctions helps improve the effectiveness of state land management and contributes to limiting land disputes in practice. However, there needs to be a suitable and effective mechanism to implement this activity, otherwise the results will not be as expected by lawmakers and managers. In fact, recent times have shown that many localities still have land allocation at prices significantly lower than market prices, although the law has very clear regulations on the method of land allocation for investment in commercial housing construction through auctions. This causes huge losses to the state budget. The current problem is that land valuation still has many shortcomings, land allocation activities for investors to build commercial housing are not as effective as the set goals, so the legal framework regulating land allocation activities for investment in building commercial housing without auction also has many shortcomings and unreasonableness.

Firstly, because it is organized and implemented by a State administrative agency, price appraisal still has the characteristics of an administrative procedure in land allocation activities, and it is not possible to separate price appraisal activities into a completely independent procedure to ensure objectivity and fairness based on the market coordination mechanism. According to many researchers, the specific land price regime is considered one of the great reforms suitable for the majority of land users, opening a new era in determining land prices closer to the market economy. However, it is also attached to an administrative relationship, one of the stages before the provincial People's Committee makes a decision, so the above price determination mechanism has not yet brought about the expected results (Nguyen Thi Dung, 2014). In which, the Chairman of the Provincial People's Committee, as the Chairman of the appraisal council, makes the final decision on specific land prices, and the advisory land price has no applicable value but is only one of the bases for making the final decision.

Second, the ultimate nature of determining land prices and allocating land for commercial housing construction by investors is an equal-price transaction, ensuring fairness and transparency in a civil relationship, completely free from administrative constraints with unequal participation from the subjects in the relationship of allocating land for investment in commercial housing construction, which still lacks transparency and connectivity (Truong Giang, 2019). According to the 2013 Land Law and Decree 44/2014/ND-CP, the Department of Natural Resources and Environment and the Department of Finance are the two competent authorities in determining land prices. This unintentionally imposes heavy administrative

constraints on the procedure of allocating land for commercial housing construction when there is participation of both administrative agencies in the same procedure, narrowing the access of investors to land funds, thereby lacking fairness and transparency among enterprises when implementing investment projects. The 2024 Land Law on land price determination has been amended and supplemented, marking a new change in land price determination, specifically in Article 32 of Decree 71/2024/ND-CP stipulating: *“The financial authority at the same level shall submit to the People's Committee of the competent level a decision to establish a specific Land Price Appraisal Council according to the provisions of Clause 2 and Clause 3, Article 161 of the Land Law to appraise land price plans in the form of a regular Council or a case-by-case Council, in which: i) The representative of the land price consultancy organization participating in the Council is a person who is qualified to practice land price consultancy according to regulations and does not belong to a land price consultancy organization hired to determine specific land prices; ii) The land price expert participating in the Council is a person with at least 05 years of experience working in one of the fields of land finance, price management, land management, and price appraisal.”* Thereby, it can be seen that the participation of administrative agencies in determining land prices no longer plays a leading role, but instead is the consultation on land price determination by land price experts, those who are qualified to practice land price determination consultancy according to regulations and are not part of land price determination consultancy organizations hired to determine specific land prices, contributing to making land price determination more objective, transparent, closer to the market, ensuring fairness among investors when accessing land funds to implement investment projects.

Third, the determination of land prices is currently mainly based on market prices. However, the fluctuations in market prices in Vietnam for land are quite complicated and inaccurate, not reflecting the laws of supply and demand in the market. There are times when land prices skyrocket due to strong brokerage activities of enterprises, and sometimes land prices stagnate and the land market freezes.

On the other hand, the market price specifically reflected through land transactions is not true to the actual demand and real transfer value. Because the price stated in the contract is fabricated based on the price regulated by the State, it is not the actual transfer price of the parties. Currently, the difference in land prices between the market price and the price regulated by the State is a huge gap, lacking consistency that cannot be overcome. In fact, the average land price regulated by the State is only about 30% to 40% of the market price. This also causes

considerable difficulties for appraisers when collecting and processing information to advise on determining land prices for competent state agencies (Nguyen Tien Thoa, 2018).

Fourth, land prices are affected by subjective factors aimed at manipulating the market for profit, and group interests appear in land allocation activities for investment in commercial housing construction in particular, and land allocation with land use fees in general, which seriously reduces land value, causing losses to the state budget, or increases prices, causing price fever for the purpose of illegal profit.

Fifth, land use rights and property attached to land, specifically housing, in Vietnam are inherently an inseparable entity. Although in specific relationships, land and property attached to land are still resolved independently according to each dispute relationship, there is still a correlation of influence and mutual impact in the harmonious resolution of rights and obligations between the parties. However, in terms of administrative management, land use rights and housing are under the management of two separate administrative agencies, the Ministry of Natural Resources and Environment and the Ministry of Construction. Therefore, the current land valuation is still not comprehensive, mainly based on physical properties, external characteristics that are directly related to land use rights, ignoring the purpose of land use rights of investors agreed with the State, not maximizing the role of competent state agencies in determining the value of land use rights, not effectively building a market mechanism in land use rights valuation before handing over land to investors" (Ninh Thi Hien, 2017). This leads to the land price being valued not being consistent with its actual value, because land price, in addition to its inherent physical properties, also depends on location, shape, area, environment, history of use, transaction purpose, market information, etc.

The above analysis shows that the practice of land valuation when allocating land for investment in commercial housing construction still has many shortcomings and inefficiencies, and has not achieved the expected results of lawmakers. According to Marxist-Leninist political economy, the price of a commodity is determined by the value of that commodity, but in land, land price is also the crystallization of the labor process on the land that creates "land value" (Nguyen Thi Dung, 2014). According to the provisions of the 2013 Land Law, there are five methods of land valuation, including: direct comparison, deduction, surplus, income, and price adjustment coefficient. To ensure the suitability of land prices compared to the real value of land as well as the valuation meeting people's expectations, the valuation activities must be truly objective, the Valuation Council performs its tasks independently, avoiding the impact and intervention of other agencies, organizations and individuals in the valuation process. However, when the 2024 Land Law comes into effect, land valuation only has 4 methods,

specifically: Decree 71/2024/ND-CP specifically stipulates the order and content of determining land prices according to 4 methods including comparison, income, surplus, land price adjustment coefficient, accordingly the law has eliminated the deduction method in determining land prices.

In the auction to receive land for investment in commercial housing construction, determining the floor price is extremely important, a prerequisite for the auction to take place. The floor price must be reasonable and ensure that the land use right is allocated at the highest price, at least equal to the price on the transfer market. In addition, it is necessary to focus on minimizing and preventing the situation where auction participants cheat and collude to manipulate the auction results. Therefore, the floor price of the auction must be close to or equal to the market price. Therefore, it is necessary to perfect the regulations governing the valuation council in the Land Law, ensuring independence in the implementation of valuation, contributing to improving the accuracy and objectivity of valuation results.

Some countries in the world have separate regulations on the authority to decide on land prices and the authority to decide on land allocation and land use rights belonging to two different independent agencies. For example, in Thailand and Taiwan, the central land and real estate valuation agency is the Ministry of the Interior; or in Malaysia, the land and real estate valuation agency belongs to the Ministry of Finance;... According to the author, only then can the objectivity of the valuation results be ensured. In Vietnam, it is necessary to change the regulations on this issue in the direction of assigning only one focal agency to carry out land valuation work, which must be an independent valuation organization under the Ministry of Finance and not dependent on the Provincial People's Committee - the entity with the authority to allocate land for investment in the construction of commercial housing.

In addition, it is necessary to eliminate the two types of land prices that exist in parallel, namely the price regulated by the State and the market price, and instead make adjustments so that the land price regulated by the State must be at the same level as the market price. Only then can we put an end to the situation of "creating a fake financial system" in Vietnam " (Dang Hung Vo, 2019) . At the same time, it is necessary to eliminate the method of determining the price adjustment coefficient, because this method is not effective in determining the land price equivalent to the market price. This method determines the land price based on the land price adjustment coefficient multiplied by the land price specified in the Land Price List of the Provincial People's Committee. Compared to reality, the land price issued by the Provincial People's Committee is only 30% - 40% of the market price, it can be seen that this method

causes a significant loss to the state budget. On the other hand, the "Technical Valuation Regulations" issued by the Ministry of Finance also do not stipulate this method.

3. Conclude

Land price is a reflection of the value of land use rights, contributing to the regulation and effective allocation of land use. In investment projects, land prices that are appropriate and closely follow the market help to select investors with sufficient potential to implement investment projects. In addition, deciding on land prices close to market prices also ensures fairness and transparency in investors' access to and receipt of investment projects. Accordingly, it is necessary to minimize the possibility of administrative control and management in pricing, ensure equality in land allocation to implement investment projects, eliminate the mechanism of asking for and giving, creating opportunities for the emergence of group interests and abuse of power for profit.

The issue of separating valuation from administrative procedures on land allocation, empowering an independent organization in land valuation is a necessary issue in enhancing the objectivity in the valuation mechanism and the decision on land price depends entirely on objective factors from the usage process, purpose of use, geographical location without being affected by any subjective factors.

In addition, in valuing land use rights before handing them over to investors for project implementation, it is necessary to maximize the role of competent state management agencies related to land use rights, in order to propose and provide data and information related to land to create a comprehensive overview with all the elements constituting the value of land use rights, thereby deciding on land prices in accordance with reality to ensure the effective and proper use of assets owned by the people.

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