

## LEGAL LIABILITY OF PROPERTY DEVELOPERS REGARDING THE FULFILLMENT OF OBLIGATIONS TO CONSUMERS IN SALE AND PURCHASE TRANSACTIONS USING THE BINDING SALE AND PURCHASE AGREEMENT

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### Abstract

Business people show great interest in the development of the property industry. With promising market prospects, developers have significant legal responsibilities to potential buyers. To ensure legal certainty and avoid future conflicts, consumers must understand and comply with the legal rules contained in the agreement. The Sales and Purchase Agreement functions as a contract between the seller and the buyer at the initial stage of the home buying and selling process. This research examines the developer's responsibility towards consumers in house sale and purchase agreements through the Agreement of Sale and Purchase Binding mechanism, because a lack of consumer awareness and knowledge can increase risks to their rights. The method used in this research is based on normative juridical. The aim of this research is to determine the developer's legal responsibility towards buyers as consumers, so that there is legal certainty for buyers using the Agreement of Sale and Purchase Binding system. Developers must bear the losses experienced by consumers in accordance with Article 19 of Law Number 8 of 1999 concerning Consumer Protection. In accordance with Article 19 of Law Number 8 of 1999 concerning Consumer Protection, this research aims to determine the developer's legal responsibility towards buyers as consumers, so that buyers can obtain legal certainty through the Agreement of Sale and Purchase Binding system. In addition, the developer is responsible for providing accurate information and guaranteeing the quality of construction, which includes the construction period to the maintenance period, until all sales and purchase agreements are completed.

**Keywords:** Legal Responsibility, Property Developer, Legal Protection

## INTRODUCTION

In the event that condominium developers meet the specified conditions and keep the promises they have made, they are legally obligated to the condominium consumers to whom they have made commitments. This legal obligation extends to all stages, including the pre-transaction, transaction, and post-transaction stages. Prospective residents have rights during the pre-transaction stage due to the developer's legal obligations, and businesses also have a duty to uphold these rights. Furthermore, the public is entitled to inhabit, enjoy, and own a home that is suitable for living in a healthy, peaceful, and harmonious environment.

Since ancient times, land has had a close connection with human life, serving as a basic need for habitation, reproduction, and various activities. Therefore, the relationship between humans and land has always existed. Land is considered one of the sources of life and livelihood because it provides many benefits and values. In human life, land holds an important role with two main functions: as a social asset and as a capital asset. As a social asset, land plays a role in strengthening social unity within Indonesian society. As a capital asset, land has evolved into a highly significant economic commodity, not only as a tradable good but also as an object of speculation (Setiabudi, 2013). In housing development, all elements of the government and developers must be involved, or developers must systematically implement proper control, to ensure that the development process is conducted fairly and impartially. This approach will lead to the achievement of public welfare.

The use of the Sale and Purchase Binding Agreement by property developers in sales transactions is based on several key reasons:

1. **Legal Protection**  
The Agreement of Sale and Purchase Binding provides legal protection for the involved parties, namely the developer and the buyer.
2. **Transaction Completion Assurance**  
The Agreement of Sale and Purchase Binding sets out several requirements that must be adhered to by the relevant parties before the transaction is completed. This ensures that the transaction will meet the expectations of both parties.
3. **Building Trust**  
The use of the Agreement of Sale and Purchase Binding helps build trust between the developer and the buyer. With an official document that regulates the transaction in detail, buyers feel more confident in making the purchase.
4. **Licensing Requirements**  
In some countries, the Agreement of Sale and Purchase Binding can be a legal requirement needed to obtain building permits or other permissions from the government. Therefore, developers use the Agreement of Sale and Purchase Binding to meet these requirements.
5. **Gradual Payment**  
In some cases, the Agreement of Sale and Purchase Binding allows payments to be made in stages according to the progress of property development. This provides flexibility for buyers to make payments according to the project's advancement.
6. **Buyer Protection**  
The Agreement of Sale and Purchase Binding offers protection to buyers against the possibility of the developer failing to meet their obligations, such as not completing the property development or not delivering the property unit as agreed.

Many people are interested in owning a move-in ready home because it is considered a fulfillment of the need for a home, which is an individual right and responsibility. Some people also believe that their lives are incomplete without owning their own home. However, fulfilling this need is not merely a formal requirement for shelter. Everyone wants their home to have adequate public, social, and environmental facilities and meet health standards. According to Article 129 of Law Number 1 of 2011 on Housing and Settlement Areas, housing built by developers must meet all these requirements. Fulfilling these requirements is an absolute right of consumers and a responsibility of businesses. Businesses are held accountable for this because consumer rights are stipulated in Article 7(d) of Law Number 8 of 1999 on Consumer Protection. They must ensure that the products they produce comply with applicable quality standards.

According to Article 20, paragraph (1) of Law Number 1 of 2011 on Housing and Settlement Areas, the first stage in the implementation of housing development is planning. After the planning and design stages are completed, the next step is the construction of the housing, as stipulated in Article 20. Housing construction is one of the most critical components in housing implementation because it directly relates to the safety of the residents who will live in it (Hamzah, 1990).

The above articles detail the procedures that housing developers must follow regarding the implementation of construction. This is also part of the developers' responsibility to ensure that the construction adheres to the established quality standards. The purpose of complying with these regulations is to ensure that housing development includes public facilities, improves housing quality, incorporates appropriate design, and considers safety factors based on regional spatial planning. This is also part of the housing developers' responsibility as producers towards consumers (Santoso, 2016).

If the concept of home buying is viewed based on contract law, then the subjective requirements may not be fulfilled. In this regard, the agreement is not automatically void but can be annulled through a court decision. According to Article 1320 of the Civil Code, the Agreement of Sale and Purchase Binding is considered a valid standard form agreement if it explicitly fulfills the four elements stated in the article.

## RESEARCH METHOD

The research in this article employs a normative juridical approach, which is a method in legal research focusing on the analysis of literature or secondary data (Matheus & Gunadi, 2024). This research is descriptive-analytical, aiming to provide a systematic, factual, and current overview of the facts, conditions, situations, or issues being analyzed (Soekanto & Mamudji, 2006). To collect data, this research applies the technique of library research. The study objects include primary and secondary material, which are analyzed qualitatively with a focus on the quality of the legal norms themselves. The analysis is conducted using a normative qualitative analysis technique, which involves systematic interpretation by connecting provisions from various legal regulations, thus resulting in a systematic analysis.

## RESULTS AND DISCUSSION

### **Fulfillment of Property Developer Obligations Towards Consumers Through the Mechanism of Purchasing Units via the Conditional Sale and Purchase Agreement**

To provide protection for the interests of both home buyers and sellers, it is important to have clear guidelines regarding the purchase agreement for houses. This agreement is a contract between the buyer and the developer that establishes the legal relationship between them. In this relationship, each party has the right to demand from the other party, and the party being demanded is expected to fulfill those demands. Each party involved in the agreement expresses their willingness and readiness to participate in the agreement. An agreement is formed when both parties reach an agreement. An agreement is a binding agreement between two or more parties to do something that has been agreed upon. If one party fails to fulfill its obligations or breaches the agreement, it can harm the other party (Raharjo, 2009).

The formulation in Article 1313 and Article 1314 of the Civil Code stipulates that every performance to be carried out by a debtor in an agreement also requires the debtor to demand a counter-performance from the other party. From this the Agreement of Sale and Purchase Binding, it can be explained that an agreement creates an obligation that is both unilateral and reciprocal. The Agreement of Sale and Purchase Binding is an agreement that contains clauses regarding promises from the property developer to sell a house to the consumer, and promises from the consumer to buy a piece of land from the developer, where the house will be built according to the consumer's order. This Agreement of Sale and Purchase Binding is made based on an agreement between the two parties with the aim of carrying out the legal transaction of buying and selling as evidence of the transfer of rights.

The Agreement of Sale and Purchase Binding is a legal document that regulates various aspects of property transactions between sellers and buyers. In the Agreement of Sale and Purchase Binding, there are several provisions that govern the rights, obligations, and responsibilities of both parties. Firstly, the Agreement of Sale and Purchase Binding must include detailed information about the parties involved, including the full identities of the seller and buyer, as well as information related to the ownership of the property to be sold. This is important to ensure that both parties have the legal capacity to carry out the transaction (Budiono, 2016).

Furthermore, the Agreement of Sale and Purchase Binding must also include provisions regarding the sale price and payment of the property. These provisions must be clear and comprehensive, including the agreed sale price and the method of payment. Clear and explicit writing regarding these price and payment provisions is crucial to avoid uncertainty or disputes later regarding property payments. Lastly, the Agreement of Sale and Purchase Binding must also include provisions related to property risks and losses. This includes the risk of natural disasters, fires, or

other damages that may occur to the property before handover. By establishing clear provisions regarding property risks and losses in the Agreement of Sale and Purchase Binding, the parties can understand their responsibilities regarding the property's condition before handover and arrange necessary steps to reduce the risk of losses (Hamonangan et al., 2021).

The rights and obligations between property developers and consumers in the Agreement of Sale and Purchase Binding for houses are interdependent, meaning the developer's obligations become the consumer's rights, and vice versa, the consumer's obligations become the developer's rights. The following is an explanation of these rights and obligations:

1. Consumers have an obligation to pay an agreed-upon amount of money to the property developer, which is the developer's right.
2. Consumers have the obligation to pay Land and Building Tax for the land and house purchased from the developer, if stipulated in the Agreement of Sale and Purchase Binding, which becomes the developer's right.
3. The consumer's obligation to pay notary fees and other fees stipulated in the Agreement of Sale and Purchase Binding for the house becomes the developer's right.
4. The developer's obligation to deliver the house according to the agreement in the Agreement of Sale and Purchase Binding becomes the consumer's right.
5. The developer's obligation to build facilities, infrastructure, and public utilities in accordance with Article 42 of Law No. 1 of 2011 becomes the consumer's right.
6. The developer's obligation to split the parent land ownership certificate into certificates per plot as per the consumer's order becomes the consumer's right to obtain the certificate of the purchased house as a form of legal certainty in Indonesian land law.

In implementing the Agreement of Sale and Purchase, consumers need to focus on the clauses contained within the Agreement of Sale and Purchase Binding. Important aspects to consider include the amount of money paid at the beginning of the agreement, the payment schedule, the handover time, unit specifications, and the developer's responsibilities if unable to fulfill obligations. Typically, issues arise after the signing of the Agreement of Sale and Purchase Binding due to developer negligence and the consumer's desire to request a refund of the down payment made (Wihaningsih et al., 2021). In the Agreement of Sale and Purchase Binding, issues that may arise due to unfulfilled elements of the sale and purchase include land certificates that are still in process or the unpaid taxes related to the sale and purchase of land by the seller or buyer.

However, in the Agreement of Sale and Purchase Binding, both parties intending to engage in the sale and purchase are bound and have rights and obligations to fulfill the provisions agreed upon in the agreement. The Agreement of Sale and Purchase Binding arises due to certain obstacles or requirements stipulated by the Law related to the sale and purchase of land rights, which result in the delay of completing the sale and purchase transaction. These requirements can originate from legislation or from agreements between the parties involved in the sale and purchase of land rights. An example of a requirement from the Law is that the sale and purchase must be paid in full before the Deed of Sale and Purchase can be signed.

Generally, requirements that often arise are those agreed upon by the parties involved in the sale and purchase, such as the buyer's desire to have the land certificate for the land they are purchasing, while the land is not yet certified, or the buyer's inability to fully pay the land price, resulting in only being able to pay half of the agreed price. However, in practice, before the sale and purchase of land is conducted in the presence of an authorized PPAT, the parties create a preliminary deed of sale and purchase of land before a notary. This binding serves as a preliminary agreement of the main purpose of the parties in transferring land rights. This sale and purchase binding contains promises to execute the sale and purchase of land after the necessary requirements are fulfilled. Single-family homes and/or row houses that are still in the construction process can be marketed through a preliminary sale and purchase agreement system in accordance with the provisions of legislation.

### **The Legal Responsibility of Developers Towards Consumers in Home Sales Agreements Regarding the Fulfillment of Consumer Obligations through the Mechanism of Conditional Sale and Purchase Agreement Regarding the Theory of Legal Responsibility**

Housing developers, also known as "developers," are individuals or companies working to transform residential areas into habitable dwellings with economic value that can be traded. In Indonesia, most developers are associated with two housing developer associations, namely REI (Real Estate Indonesia Association) and APERSI (Association of Housing and Settlement Developers throughout Indonesia). According to the provisions stated in Article 5 paragraph (1) of the Minister of

Home Affairs Regulation Number 5 of 1974 concerning Provisions for the Provision and Granting of Land for Company Needs, companies engaged in housing development can be classified as housing developers.

These companies undertake housing development with various models, types, and house types on available land. These houses will form a residential environment equipped with public facilities and other amenities needed by its residents. According to Law Number 8 of 1999 concerning Consumer Protection, housing developers are classified as business actors. According to the definition stated in Article 1 number 3, business actors refer to any individual or business entity operating in the legal territory of the Republic of Indonesia and conducting business activities in various economic sectors, either individually or through agreements with other parties.

A person is legally accountable for specific actions or may face sanctions if their actions contravene existing legal rules. General legal theory also states that every individual or society, including government officials, is obliged to be accountable for their actions, whether erroneous or not. Purchasing a house from a developer through reservation or construction initiated after payment and the signing of an agreement utilizes contract clauses as agreements that can expedite the reservation process. Standardized agreements in house purchases streamline transactions because developers and consumers do not need to draft agreements together, which may be difficult due to time constraints. These standardized agreements offer many benefits, such as expediting and simplifying the process for both parties. In practice, developers provide a House Purchase Agreement Letter to consumers after they make the initial down payment.

Consumers cannot reject or alter these standardized agreements because they have paid the down payment and must adhere to the rules set by the developer. Therefore, as buyers, individuals must be more diligent when purchasing houses built by developers. Sometimes, developers may fail to fulfill their obligations outlined in the agreement, which can be termed as a breach of contract. Some forms of breach of contract include: failure to fulfill obligations entirely, imperfect performance, delays in fulfilling obligations, or violations of the terms of the agreement. According to the law, breach of contract can only be justified if caused by force majeure, which refers to situations beyond the control of the party experiencing it.

The party experiencing force majeure must prove that the situation genuinely obstructs the fulfillment of the promise. Events often categorized as force majeure or acts of God include incidents beyond human control. Force majeure or acts of God have two effects: permanent (absolute) and temporary (relative). In situations of absolute force majeure, because its effects are permanent, the agreement becomes void. This means restoring conditions to their original state, as if the agreement never occurred. Meanwhile, in cases of relative force majeure, because it is temporary in nature, obligations are only suspended. This means obligations will resume once the force majeure situation ends (Sugianto, 2017). In general, risk means danger. In the context of contract law, risk more specifically refers to liability in the event of loss.

This responsibility refers to the legal obligation that requires both parties to be liable for losses arising from their negligence. By drafting a comprehensive and detailed contract, risks can be minimized. An effective contract should encompass all foreseeable risks, including those that may arise in the future (Sugianto, 2017). In the realm of civil law, developers who fail to fulfill their commitments can be pursued legally to pay damages, annul agreements, transfer risks, and bear litigation costs. This is an overview provided by legal experts regarding the aspect of consumer protection in the legal context (Dewi, 2015).

According to Mochtar Kusumaatmadja, as cited in a book discussing consumer protection law, the concept of consumer protection law encompasses all principles and legal rules governing interactions and issues arising between various parties in society involved in consumer goods or services transactions. In his work on consumer protection, Az. Nasution also states that consumer protection law consists of principles and regulations that govern and protect consumer interests. According to these experts, the goal of consumer protection law is to ensure the rights and obligations of all parties involved in such transactions.

The legal liability of housing developers due to breach of contract in the process of completing house construction based on the Land and Building PPJB (Sale and Purchase Agreement) is the responsibility arising from fault (Liability based on fault) in fulfilling their obligations. As a result of this negligence, housing developers are required to provide compensation, damages, and/or replacements if the goods and/or services received or utilized by consumers do not meet the agreement. In addition to liability for fault (Liability based on fault) with the obligation to provide compensation to consumers, housing developers can also be held criminally responsible if there is evidence of wrongdoing (Blaang, 1966).

Furthermore, Article 4 of Law No. 8 of 1999 concerning Consumer Protection emphasizes the need for legal protection of consumer rights that must be guaranteed and protected. Plaintiffs in legal cases must have clear grounds regarding the responsibility of the accused in every legal situation. According to the book by Eli Wuria Dewi discussing consumer protection law, the basis of product liability in consumer protection law includes the following:

1. Liability based on fault, also known as "liability based on fault," states that a person can only be legally held accountable if there is evidence of fault on their part.
2. The presumption principle for always being responsible, also known as the presumption principle for liability, states that the defendant is presumed responsible until they can prove their innocence. The burden of proof lies with the defendant.
3. The principle of not always being responsible, or assumption of non-liability, applies to limited transactions conducted by customers under certain conditions. Businesses cannot be held accountable in this regard.
4. The principle of absolute liability, also known as strict liability, analogizes product liability with absolute liability, meaning that businesses are held responsible absolutely without the need to prove they are at fault (Blaang, 1966).

Based on the description, as a business entity in home purchases, developers have absolute liability. This means that developers are fully responsible for customers from the moment the product is sold until all rights and obligations are settled. The responsibility of business entities is regulated in Article 19 of Law No. 8 of 1999 concerning Consumer Protection, which includes the obligation to compensate consumers for goods or services that cause harm. The value of the traded goods must be proportional to this compensation. The responsibility of business entities, as regulated in the law, relates to the legal relationship between business entities and consumers, both in the context of contracts and outside of contracts. However, home purchases from developers often do not proceed smoothly because developers frequently fail to fulfill their promises. To simplify matters, agreements between developers and consumers usually take the form of standard contracts containing clauses that benefit the developer. As a result, consumers are often disadvantaged and face difficulties in obtaining their rights if developers fail to fulfill their promises. Often, these standard contracts are made without regard to applicable regulations, such as those stipulated in the Constitution, the Civil Code, Law No. 8 of 1999 concerning Consumer Protection, and other related regulations.

## CONCLUSION

Every property developer, also referred to as a developer, may not always smoothly execute their activities in the process of home purchases. This is because there are inevitably some differences between what is written and what is implemented. However, in home purchases, the most important aspect is that the clauses of the agreement made between the developer and the consumer must be crafted as well as possible to ensure smooth operation. It should be noted that the agreement for the sale and purchase of a house can also be seen as a standard contract, whereby the agreement contains standard clauses that have been drafted and prepared by the developer. The developer's responsibility to the consumer includes covering any losses suffered by the consumer, as outlined in Article 19 of Law Number 8 of 1999 on Consumer Protection. Additionally, the developer is accountable for providing accurate information and ensuring the quality of the construction. This responsibility extends beyond the initial sale, encompassing the entire construction process and the maintenance period, until all conditions of the sale and purchase agreement are fully met.

In order to ensure the smoothness of their business operations, property developers certainly need buyers. Therefore, the process of purchasing a house can proceed smoothly if there is a balance between the responsibilities of the developer and the buyer. It is important to draft an agreement that includes balanced rights and obligations for both parties. The aim is to ensure that both the developer and the consumer have equal footing in fulfilling their obligations in line with the agreed-upon terms. Additionally, the agreements and their clauses must comply with the requirements set forth by the law to prevent any violations.

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