

Legislative Council Panel on Housing

Sales Descriptions of Overseas and Local Uncompleted Residential Properties

Purpose

This paper updates Members on the position of proposals to introduce legislation to regulate sales brochures for overseas and local uncompleted residential properties.

Background

2. The Law Reform Commission (LRC) has previously put forward recommendations on ways to regulate sales brochures through legislation as a means to enhance consumer protection.

Overseas residential properties

3. In respect of sale of overseas uncompleted residential properties in Hong Kong, LRC recommended enacting legislation to require, among other things:

- (a) vendors of such properties to engage licensed estate agents in Hong Kong to conduct sales; and
- (b) estate agents so engaged to provide sales brochures¹ containing accurate and up-to-date information and to be held liable if such legislative requirements are breached intentionally or recklessly by estate agents.

¹ Sales brochures are to be compiled by estate agents in Hong Kong if brochures are not provided by vendors of overseas uncompleted residential properties.

Local residential properties

4. In respect of sale of local uncompleted residential properties, LRC recommended enacting legislation to require developers to produce sales brochures which should contain certain specified information, with penalties for non-compliance. In response to the recommendations, we published a consultation paper in April 2000 to seek views from the public on proposals to introduce legislation to regulate sales brochures and advertisements for local uncompleted residential properties. As market conditions had changed significantly after the publication of the consultation paper and there were diverse views on the proposals, we considered it necessary to further review the need for such legislation and to explore other feasible measures which could enhance the quality of information provided in sales brochures of local uncompleted residential properties. We briefed this Panel on this matter on 18 July 2001.

Developments

Overseas residential properties

5. The Estate Agents Authority (EAA) has commissioned a study to take stock of the laws and practices relating to sale of residential properties in other jurisdictions. Based on the study's findings and the estate agency sector's views, EAA has made a number of observations, including:

- (a) the proposed regulatory scheme would not be effective if it would apply to estate agents only but not to developers, as property information is often provided directly by developers and sales could be concluded outside Hong Kong; and
- (b) the legal frameworks of other jurisdictions may be very different from that of Hong Kong. For instance, the laws of other jurisdictions may not require similar protection to property buyers.

6. In recent years, consumers have become more aware of the higher risk of purchasing uncompleted residential properties outside Hong Kong and have become more cautious in considering buying such properties. EAA has published a pamphlet setting out the matters which prospective buyers of such properties should be aware of. The number of complaints about sale of overseas uncompleted residential properties has diminished in recent years. The need for legislation has therefore become less imminent. EAA's current priorities are to enhance the regulatory regime for estate agent operations in Hong Kong and to raise the standards of local estate agents. We understand that EAA will continue to monitor the number of relevant complaints/enquiries from the public and, if and when necessary, make appropriate recommendations to the Administration on the need to regulate the sale of overseas properties in Hong Kong.

Local residential properties

7. A self-regulatory regime has been implemented since we last reported to this Panel in July 2001. The Real Estate Developers Association of Hong Kong (REDA) promulgated in June 2001 a set of guidelines (copy at Annex 1) prescribing the types of information to be included in sales brochures of uncompleted residential properties undertaken by its members. Replicating the requirements in the above-mentioned consultation paper, REDA's guidelines require that certain types of essential information must be incorporated, including: saleable area and gross floor area of units (which have to be calculated in accordance with standardized formulae), floor plans, a schedule of prominent fittings and finishes, location plans, disposition plans and information on salient conditions in land leases and deeds of mutual covenant. If applicable, the sales brochures should also set out the obligations of owners in slope maintenance, with plans showing the location and boundary of such slopes. The information helps prospective purchasers to make well-informed decisions as to whether or not to buy an uncompleted residential property. REDA examines every sale brochure issued by its members and works with its members for rectification in the event of discrepancy or omission.

8. To provide additional assurance, the Administration examines, in parallel with REDA's checking, the sale brochures of local uncompleted residential properties put on sale. In the event of omission, the Administration will ask the developer concerned for rectification. The Administration has also established a website at www.hplb.gov.hk and a bilingual telephone hotline since August 2001 to receive complaints from members of the public about sales brochures of local uncompleted residential properties. The complaints received were related to such matters as the arrangements for handing over the units, the services provided after intake, etc. Details of the complaints received are set out in paragraph 11 below and Annex 2.

9. On the part of consumers, they should find out more about the properties they are interested in buying (through publicly available information or professional advice from estate agents, surveyors, etc.) and should be more aware of their rights and obligations in property transactions. We have invited the Consumer Council to step up its publicity efforts. The Consumer Council has published information pamphlets on points to note in property purchases and has, with the assistance of REDA, made available copies at sales offices of uncompleted residential properties. A bilingual notice reminding potential purchasers of the merits of appointing their own solicitors has also been made a mandatory element required to be included in sales brochures.

Omission of information

10. In the first few months after implementation of REDA's guidelines, there were a small number of occasions where developers had omitted the inclusion of scales in layout plans, but such omissions were promptly rectified. Generally speaking, developers have been able to comply with REDA's guidelines and the requirements relating to the provision of information in sales brochures as prescribed by Lands Department's Consent Scheme.

Accuracy of information

11. It is equally important that the information in sales brochures is accurate. This can be checked only after the residential development has been completed and the buyers have access to the units. As the maximum length of the pre-sale period allowed is 20 months, we need to look at the complaint situation over a longer horizon so as to get a better indicator of the accuracy of information provided in sales brochures. From August 2001 to March 2005, we received 17 complaints relating to information contained in sales brochures to which REDA's guidelines apply (summary of the complaints at Annex 2). All of these complaints have been properly dealt with.

Responsiveness of guidelines

12. The self-regulatory regime is responsive to changes in customers' expectations. For instance, in response to public concerns as to the scope of services covered by management fees and to suggestions of the Consumer Council, REDA has recently issued additional guidelines requiring its members to make available in their sales brochures information on the payment terms and contract periods for telecommunication services if the management fees are inclusive of such services.

Assessment

13. There is close liaison between the Consumer Council, REDA, EAA and us to keep the present regime under review and to identify scope for further improvements in the light of operational experience. We all share the view that the self-regulation mechanism is generally meeting its intended objectives. The following observations are particularly relevant:

- (a) the essential information is being made available to prospective purchasers as required by REDA's guidelines;

- (b) the number of complaints received has been relatively small, and all of them have been properly dealt with;
- (c) REDA's guidelines can be updated from time to time to meet the changing needs of the market and consumers' expectations; and
- (d) the effectiveness of the scheme is enhanced by increased consumer awareness and education.

14. It is necessary to strike a balance between protecting consumers' interests and providing an environment conducive to business development. We believe the current regime has hit a right balance and is in line with our housing policy of keeping market intervention to a minimum. We do not intend to resuscitate the proposals to enact legislation to regulate sales brochures for local uncompleted residential properties, but we will continue to work closely with the Consumer Council, REDA and EAA to ensure that the guidelines are adequate and effective in meeting the needs of consumers and the property sector.

Housing, Planning and Lands Bureau
April 2005



香港地產建設商會

Annex 1

THE REAL ESTATE DEVELOPERS ASSOCIATION OF HONG KONG

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Guidelines for Sales Descriptions of Uncompleted Residential Properties

A. Information on residential properties for sale

The following information concerning the residential properties should be provided in sales brochures:

1. floor area of the residential properties

The calculation of the saleable area and gross floor area of the residential properties should be standardized as follows:

- i. The saleable area of a residential property shall be calculated in accordance with the definition set out in the standard form of Agreement for Sale and Purchase as provided in LACO Circular Memorandum 40A. The criteria of calculation are listed out in Annex A.
- ii. The gross floor area of a residential property shall be the sum of its saleable area, its apportioned share of the common areas, together with any other area which is for the exclusive use of its purchaser. The apportionment to the individual residential property attributable to common areas such as clubhouses, lift lobbies, management offices, etc shall be listed clearly.

2. floor plan

Floor plans of typical and non-typical floors should be shown. It is sufficient to show only one plan to represent a number of floors with similar layout and external dimensions. The floor plan should contain dimensions of compartments of the residential properties and the floor-to-floor height of the residential properties in each case in accordance with the latest building plan approved by the Building Authority. A note should be inserted at a conspicuous place adjacent to the floor plan to bring to the reader's attention that the internal areas of upper floors may be slightly greater than that of the lower floors.

3. prominent fittings and finishes



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B. Information on the development and adjacent areas

1. Location plan

The location plan should show existing communal facilities as listed under Annex B located within a distance of 0.25km from the boundary of the development. Existing and proposed land uses of an area within 0.5km of the boundary as shown in the latest Outline Zoning Plan should be included. The location plan should indicate the location of public transport terminals and rail stations and any pictorial presentations should be drawn to scale.

2. Disposition plan

The disposition plan should show the location and layouts of buildings, open areas and facilities within the boundary of the development and the expected completion date of the buildings and facilities.

3. Conditions of the Government lease

The sales brochures should contain information on salient conditions of the Government lease including user restrictions, expiry date, any community facilities to be constructed and any obligations to construct or maintain structures or landscape inside or outside the boundary of the land on which the development is to be constructed, etc.

4. Deed of mutual covenant

The sales brochures should contain information on salient provisions of the Deed of Mutual Covenant including common parts, undivided shares, sharing of management fees, appointment of manager, retained areas, etc.

5. Slope maintenance

The sales brochures should set out clearly the obligations of owners to maintain slopes etc. together with a plan showing such slope etc. and the undertakings, if any, of the developer to carry out any work on any slopes etc.



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C. Timing of provision of sales brochures

The sales brochures and price list should be made available before the date of public sale of the residential properties. For additional residential properties to be offered at the same sale exercise, the price list of such residential properties should be provided before the date of their public sale.

D. Notice as to possible changes

The sales brochures should state their date of printing. The latest version of the sale brochures should be made available at the sales office immediately on the first date of public sale. A conspicuous note should be inserted to alert readers about information which is subject to change.



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Extracted from LACO Circular Memorandum 40A, Appendix XII A

Annex A

Definition Of "Saleable Area"

"Saleable area" means :-

- (i) in relation to a unit enclosed by walls, the floor area of such unit (which shall include the floor area of any balconies and verandahs), measured from the exterior of the enclosing walls of such unit except where such enclosing walls separate two adjoining units in which case the measurement shall be taken from the middle of those walls, and shall include the internal partitions and columns within such unit; but shall exclude the common parts outside the enclosing walls of such unit Provided That if any of the enclosing walls abut onto a common area, then the whole thickness of the enclosing walls which so abut shall be included;
- (ii) in relation to any cockloft, the floor area of such cockloft measured from the interior of the enclosing walls of such cockloft;
- (iii) in relation to any bay window which does not extend to the floor level of a unit, the area of such bay window measured from the exterior of the enclosing walls or glass windows of such bay window and from the point where the bay window meets the wall dropping to the floor level of a unit but excluding the thickness of such wall;
- (iv) in relation to any carparking space, the area of such carparking space (the dimensions of which should be separately set out) measured from the interior of its demarcating lines or enclosing walls, as the case may be;
- (v) in relation to any yard, terrace, garden, flat roof or roof, the area of such yard, terrace, garden, flat roof or roof measured from the interior of their boundary lines, and where the boundary consists of a wall, then it shall be measured from the interior of such wall.



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Annex B

The location plan should show clearly and identify all free standing and purpose-built facilities, such as:-

- i. clinics;
- ii. fire stations and ambulance depots;
- iii. funeral parlours and cemeteries;
- iv. judicial facilities;
- v. refuse collection points;
- vi. hospitals;
- vii. markets;
- viii. police stations;
- ix. public carparks and lorry parks;
- x. public conveniences;
- xi. public transport terminals and rail stations;
- xii. public utility installations;
- xiii. religious institutions;
- xiv. schools;
- xv. social welfare facilities and
- xvi. sports facilities and sports grounds

within 0.25km from the boundary of the lot.

**Complaints relating to Information provided in Sales Descriptions of Local Uncompleted Residential Properties
(Position up to 19 March 2005)**

Serial number	Date received	Gist of complaint	Present position
1	5.9.02	The sales brochure did not state the extent of development in future phases, thereby understating the total number of units in the whole development.	The developer held that at the time of printing the sales brochure, it had yet to decide whether the whole development would be implemented to its fullest extent permitted. The complainant was informed of the developer's position and made no further comments.
2	12.3.03	The sales brochure for a subsequent phase of the development did not include the air-conditioner platform in the saleable area of the units, whereas that for an earlier phase did.	Both versions of the sales brochures list out separately the area of air-conditioner platform, and the formulae for measuring total saleable were set out clearly as well. Prospective purchasers can on their own include (or exclude) the areas of air-conditioner platforms in calculating the "efficiency ratio". We explained this to the complainant who did not make further comments.
3	16.7.03	The developer was slow in returning the registration fee after the complainant failed to buy a unit in the public sale.	The complainant received refund soon after lodging the complaint. Case was overtaken by events.

Serial number	Date received	Gist of complaint	Present position
4	17.7.03	The complainant bought a decoration package from the developer. The workmanship of the products was not satisfactory.	Not related to information provided in sales brochures.
5	15.10.03	The fare for shuttle bus services was to be raised after intake.	The proposed fare increase was subsequently dropped.
6	27.10.03	The graphic impression of the landscape environment contained in an advertisement was different from the actual.	It is clear that the advertisement contained just an artistic impression. We took the view that the complaint could not be substantiated. The complainant was informed accordingly and made no further comments.
7	3.11.03	The developer claimed in an advertisement published in a newspaper that the property was immediately ready for occupation, whereas in reality, the developer was still arranging for flat handover.	The occupation permit had been issued by the time the advertisement was published, and the consent to assign was issued by the Lands Department several weeks after the advertisement. The complainant took over his unit on 7 November 2003. Case was overtaken by events.
8	19.1.04	The “sky gardens” in the development failed to reach the standards as described in the sales brochure.	The developer held that the sky gardens had been landscaped in accordance with the provisions set out in the sales brochure, and that works was in hand to further enhance the style and design of the gardens. The complainant was informed of the developer’s explanation.

Serial number	Date received	Gist of complaint	Present position
9	5.3.04	The sales brochure stated that there would be shuttle bus services. However, after intake, such services were unavailable.	The sales brochure stated that such services were subject to approval from the Transport Department. The management company was then making the application. The complainant was informed and could liaise with the management company.
10	19.4.04	The developer had yet to handover the units after the completion date as set out in the sales brochures.	The developer had completed the development earlier than the completion date stated, and was then in the coursing of applying for the certificate of compliance. The certificate was issued on 3 May 2004 (i.e. about two weeks after the complaint), and handover arrangements were being made.
11-16	10.6.04 (five similar complaints received afterwards)	The completion of the development was delayed due to inclement weather. The complainants were not content with this explanation as other construction sites were apparently not affected.	Delay due to inclement weather was confirmed by the Authorized Person, and accordingly extension of time had been granted.
17	12.3.05	The developer reduced the price level soon after the complainant bought a unit.	Developers can determine price levels on their own, and Government is not in a position to regulate.