

Legislative Council Panel on Housing

Regulation of the Sales of First-hand Private Residential Properties

Purpose

This paper sets out the existing measures to regulate the sales of uncompleted first-hand private residential properties, and the steps being taken by the Administration to enhance the regulation of the sales of first-hand private residential properties through legislation.

Existing Mechanism

2. The Government is committed to maintaining the healthy development of the private residential property market, safeguarding the reasonable rights of consumers, and ensuring that consumers have access to accurate and comprehensive property information, in particular information on uncompleted first-hand residential properties. The Administration adopts a multi-pronged mechanism to enhance the transparency of the sales of uncompleted first-hand residential properties. Requirements stipulated under the Lands Department's Consent Scheme (the Consent Scheme), the guidelines issued by the Real Estate Developers Association of Hong Kong (REDA), the regulatory work of the Estate Agents Authority (EAA), and the promotion and consumer education work of the Consumer Council (CC) together make up the existing regulatory mechanism.

3. In the past two years, the Transport and Housing Bureau (THB) has implemented, through the Consent Scheme and REDA's guidelines, a number of measures to enhance the transparency and clarity of the property and transaction information on uncompleted first-hand private residential properties. These include the implementation of the "nine new measures" on sales brochures, price lists, show flats and transaction information.

4. Major requirements relating to enhancing the transparency of property and transaction information which developers are currently required to observe when selling uncompleted first-hand private residential properties under the Consent Scheme are summarized at the Annex.

5. For cases which are found to be in breach of the Consent Scheme requirements, the developers will be asked to make rectification or take other measures as appropriate. Generally, developers will rectify as soon as they can. For severe breach of the Consent Scheme requirements, depending on the severity of the breach and having regard to the interests of purchasers who have bought the properties and who may not wish to cancel the transactions, appropriate actions will be considered on a case by case basis. These actions include requesting the developer to give explanations or clarifications on the alleged breach, requiring immediate rectification of the breach, referring the matter to the relevant professional body for comments and follow-up actions, giving written warning to the developer or its solicitors or both, requiring the developer to permit the purchasers to cancel the transactions and to obtain a full refund of the money paid with interest, and suspending/cancelling the consent given in respect of the unsold units where circumstances of the case warrant.

6. THB refers cases which are suspected to be not in compliance with REDA's guidelines to REDA to take follow up action with the developers. REDA has set up a committee comprising independent persons which may deliberate on non-compliance cases and take punitive measures, including issuing warning letters or making reprimand. REDA has been encouraging its member developers to comply with the guidelines when selling uncompleted first-hand residential properties not subject to the Consent Scheme.

7. The EAA regulates and controls the practice of estate agents and salespersons under the Estate Agents Ordinance (EAO) (Cap.511). EAA has issued Practice Circulars requiring estate agents involved in the sale of properties to provide to prospective flat buyers accurate property information. If it is established that licensees are in breach of the EAO, the Code of Ethics or Practice Circulars issued by the EAA on the sale of properties, EAA may take disciplinary action against the licensees concerned in accordance with provisions in EAO.

8. The CC has been playing a key role in enhancing consumer protection and consumer education. Among other things, CC jointly published with the EAA the "Notes to Purchasers of First-hand Residential Properties", which developers must include in the sales brochures of uncompleted first-hand residential properties under the Consent Scheme. Also, upon receipt of complaints, CC will take follow up actions, including mediation. If there are strong justifications in support of a complaint case, and the case may have far reaching

implications on consumers, CC will advise the complainant of the Consumer Legal Action Fund which renders assistance to applicants whose cases satisfy the eligibility criteria of the Fund to take legal action.

9. In addition, there are various pieces of legislation regulating misrepresentation or fraudulent acts which mislead the market. These are applicable to misrepresentation or fraudulent acts committed in the course of property transactions. Under the Theft Ordinance (Cap. 210), committing a fraudulent act is a criminal offence, and an offender may be liable to prosecution. Pursuant to the Misrepresentation Ordinance (Cap. 284), a person who makes a misrepresentation inducing another person to enter into a contract may be legally liable for damages. On the other hand, under the common law, where a misrepresentation amounts to fraud, the person concerned may be required to compensate victims of that fraud.

Regulation of the Sales of First-hand Residential Properties by Legislation

10. To further strengthen the regulation of the sale of first-hand private residential properties, THB has established a Steering Committee on the Regulation of the Sale of First-hand Residential Properties by Legislation (the Steering Committee) to discuss specific issues pertaining to the regulation of the sale of first-hand properties by legislation. The Steering Committee commenced work in November 2010 and will come up with practical recommendations by October 2011. The Steering Committee intends to include all types of first-hand residential properties under the proposed legislation, including projects developed under old lease conditions, Consent Scheme projects, and completed and uncompleted first-hand residential properties. Also, misrepresentation and the dissemination of false information is one of the key areas which the Steering Committee will discuss. THB's target is to take forward the subsequent consultation in the form of a White Bill in order to expedite the process.

A Recent Case

11. The Government is concerned about the complaints relating to the residential development at 38 Conduit Road. Various government agencies, including the Buildings Department (BD), the CC and EAA are following up the cases closely. The CC and EAA are examining the

complaints regarding the development. In addition, the BD is following up on whether internal alteration works to convert the approved enclosed kitchen to an open kitchen have been carried out in the subject building. If the developer intends to carry out any alteration works in the premises which involve the structure of the building, formal approval and consent from the Building Authority is required prior to the commencement of such works. For alteration works to convert the approved enclosed kitchen to an open kitchen, even if this does not involve the structure of the building, such work may still contravene the building regulations (e.g. contravention of the fire safety requirements). BD will take immediate enforcement action against any new unauthorized building works under the Buildings Ordinance in accordance the prevailing enforcement policy.

**Transport and Housing Bureau
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**Existing major requirements relating to
enhancing the transparency of property and transaction information
for uncompleted first-hand residential properties
under the Consent Scheme**

- (a) Sales brochures must be provided, and should be made available at the sales office(s) and uploaded onto the developers' websites at least 7 calendar days prior to the commencement of sale.
- (b) Price lists must be provided, and should be made available at the sales office(s) and uploaded onto the developers' websites at least 3 calendar days prior to the commencement of flat sales. Price lists should follow the standardized price list template, which include information on the "saleable area"¹ and price per square foot/metre in "saleable area" of individual flats.
- (c) For small-scale development (i.e. a development (or a phase of a development project) with less than 100 units in total), the minimum number of units to be included in the first price list of each batch of units put up for sale will be 30 units. For large-scale development (a development (or a phase of a development project) with 100 units or more in total), the minimum number of units to be included in the first price list of each batch of units put up for sale will be 50 units or 50% of the total number of units put up for sale in the relevant batch, whichever is the higher.

¹ The definition of "saleable area", which was standardised in October 2008, means the summation of the area of the unit, the balcony and the utility platform, if any. Other areas of the unit, such as bay windows, should be separately listed out item by item but should not be included as part of the "saleable area".

- (d) Developers should make public transaction information² in the websites and sales offices within 5 working days after the signing of the respective Preliminary Agreement for Sale and Purchase, and cancelled transactions within 5 working days after the cancellation.
- (e) Show flats (if provided) have to comply with a list of requirements, including the requirement that there should be at least one show flat showing the same conditions of the actual flat to be handed over to buyers upon completion.

² Information required to be disclosed includes the particulars of the transacted flat, date of signing the ASP, the transaction amount, transactions which involve members of the Board of the developers and their immediate family members, the estimated date of completion of the development