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Panel on Housing

Meeting on 10 February 2011

**Background brief on regulation of the release of sales information on
first-hand private residential properties**

Purpose

This paper sets out the regulation of the accuracy of the sales information on first-hand private residential properties, and gives a brief account of the views and concerns expressed by the Panel on Housing (the Panel).

Background

2. Dissemination of inaccurate and incomplete information relating to the sale of first-hand private residential properties will mislead the market and prospective flat buyers. To maintain the healthy development of the private residential market and safeguard the reasonable rights of consumers, it is necessary to ensure consumers to have access to accurate and comprehensive property information.

Regulation of release of sales information on first-hand private residential properties

3. For uncompleted first-hand residential properties approved for pre-sale under the Consent Scheme¹ of the Lands Department (LandsD), developers

¹ Introduced in 1961, the Consent Scheme may be imposed by the terms of the Government Lease for the relevant land. The Scheme applies to buildings that are erected on a particular piece of land for development purposes. The Scheme allows the Director of Lands to ensure that a developer has complied with a set of requirements before he grants the developer permission to sell the property under construction. The relevant requirements cover the financial standing of the developer and financing arrangements, terms of sale and purchase agreement, terms of the deed of mutual covenant, contents of the sales brochures, and way of the pre-sale is to be carried out. The developer/vendor's solicitor is responsible for ensuring that the requirements are met. The solicitor will keep the money that the purchaser has paid, and then release the money to the vendor in the manner permitted under the Scheme.

concerned have to comply with all the requirements under the Consent Scheme. The provisions of the Consent Scheme as appropriate have also been reflected in the guidelines issued by The Real Estate Developers Association of Hong Kong (REDA) to its member developers.

4. As far as estate agents are concerned, the Estate Agents Authority (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 found and confirmed that estate agents are in breach of the Practice Circulars, or have released false and misleading property information to prospective flat buyers, EAA may take disciplinary action against the estate agents concerned in accordance with the provisions in the Estate Agents Ordinance (Cap. 511).

5. There are also various pieces of legislation regulating misrepresentation or fraudulent acts which mislead the market. These include the Theft Ordinance (Cap. 210) and Misrepresentation Ordinance (Cap. 284). Under the common law, where a misrepresentation amounts to fraud, the person concerned may be required to compensate victims of that fraud.

6. To further strengthen the regulation of the sale of first-hand private residential properties, the Transport and Housing Bureau has established a Steering Committee on the Regulation of the Sale of First-hand Residential Properties by Legislation to discuss specific issues pertaining to the regulation of the sale of first-hand properties by legislation.

A recent case

7. In November 2010, a senior staff member of a major developer was alleged to have made a misleading statement in his online blog by stating that the purchase of any uncompleted residential flats of his development project in Tai Wai, Shatin on 19 November 2010 would not be affected by the new measures, including the introduction of a special stamp duty, against speculation on residential properties announced by the Administration on the same day.

Deliberations by the Panel

8. As the remarks made by the senior staff member in the abovementioned case were grossly misleading, the Administration was requested to brief members on the actions and penalties contemplated or would be contemplated at the Panel meeting on 6 December 2010.

9. According to the Administration, REDA had been requested to follow up the matter with the developer concerned. As REDA's reply was not able to address its concerns, the Administration had written to REDA again requesting prompt follow-up action. Given that the pre-sale of the development in question was governed by the Consent Scheme, some members failed to understand why LandsD, as the regulating authority, did not communicate with the developer direct regarding the alleged dissemination of misleading information. They pointed out that unlike the Travel Industry Council which could suspend or cancel licences of tourist agencies in the event of non-compliance with its rules, REDA was only a business association with no authority to require its member developers to comply with the guidelines. They questioned if the Administration was afraid to confront with major developers. A member however held the view that the statement made by the senior staff member was not incorrect. The failure of the Administration to clearly explain the details of the new measures to the public had given rise to much confusion in the property market. The Administration was requested to report the outcome of investigation to the Panel in due course.

Latest development

10. The Panel will discuss dissemination of misleading information on sale of residential properties at its meeting on 10 February 2011.

Relevant paper

Information paper provided by the Administration for the Housing Panel meeting on 6 December 2010

<http://www.legco.gov.hk/yr10-11/english/panels/hg/papers/hg1206cb1-683-1-e.pdf>

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