

**For discussion
on 10 May 2016**

Legislative Council Panel on Housing

**The work of the Sales of
First-hand Residential Properties Authority**

This paper provides Members with an update on the work of the Sales of First-hand Residential Properties Authority (“SRPA”).

Background

2. The Residential Properties (First-hand Sales) Ordinance (Cap. 621) (“the Ordinance”) came into full implementation on 29 April 2013. The Ordinance aims to enhance the transparency and fairness of the sales of first-hand residential properties, strengthen consumer protection, and provide a level playing field for vendors of first-hand residential properties.

3. The Ordinance sets out detailed requirements in relation to sales brochures, price lists, sales arrangements, register of transactions, show flats, viewing of completed residential properties, advertisements, and the mandatory provisions for the preliminary agreement for sale and purchase (“PASP”) and agreement for sale and purchase (“ASP”) for the sales of first-hand residential properties. It also provides for prohibitions against misrepresentation and the dissemination of false or misleading information.

4. Contraventions of the relevant provisions in the Ordinance are criminal offences. There are altogether about 120 criminal offences under the Ordinance.

5. For effective implementation of the Ordinance, the Secretary for Transport and Housing has, in accordance with section 86(1) of the Ordinance, appointed public officers to implement the Ordinance. They are the staff members of the SRPA. The functions of the SRPA include:

- (a) monitor whether vendors and related parties have complied with the requirements of the Ordinance in the sales of first-hand residential properties;

- (b) issue guidelines for stakeholders;
- (c) conduct investigations on cases of suspected contravention of the Ordinance;
- (d) educate the public on matters relating to the provisions of the Ordinance; and
- (e) maintain the Sales of First-hand Residential Properties Electronic Platform (“SRPE”) which contains the sales brochures, price lists, and registers of transactions made available by vendors of individual first-hand residential developments/phases.

An overview of the current first-hand residential property market under the Ordinance

6. The requirements on the sales of first-hand residential properties as set out in the Ordinance primarily serve to address the undesirable situations in the sales of first-hand residential properties in the past which the public has denounced. For example, vendors in general presented the area of a residential property in terms of the “gross floor area” of the residential property; vendors put emphasis on making available modified show flats as a means to attract prospective purchasers; and it was not convenient for prospective purchasers to have access to various types of sales documents.

7. The SRPA considers that the Ordinance has made considerable achievements in reversing the undesirable situations and bringing a cultural change in the sales of first-hand residential properties since its implementation. The more obvious achievements include:

- (a) vendors have strictly complied with the requirements of the Ordinance that the area and price per square foot and per square metre of a first-hand residential property must only be presented in terms of saleable area;
- (b) vendors have strictly complied with the requirements of the Ordinance that if they make available show flats for a first-hand residential property in an uncompleted development/phase, they have to make available an unmodified show flat of that residential property as a

prerequisite for making available any modified show flat(s) of that residential property;

- (c) vendors have strictly complied with the requirements of the Ordinance that they have to make available the sales brochure for a period of at least 7 days immediately before the date of sale, make available the price list(s) and the sales arrangement(s) for a period of at least 3 days immediately before the date of sale, and wait for 3 days before offering to sell those first-hand residential properties if there are amendments made to the price list(s) and the document(s) containing the sales arrangements of those residential properties; and
- (d) purchasers may make use of the SRPE and the website designated by the vendor at any time to inspect the various sales documents for a development/phase, and the register of transactions for a development/phase to get to know the sales situation of the development/phase.

8. The SRPA considers that the Ordinance has been effective in facilitating prospective purchasers of first-hand residential properties to get hold of the sales information on first-hand residential properties and the relevant transaction information in the first-hand residential property market. The sales of first-hand residential properties have become more transparent, fairer and more orderly. Most of the vendors have made good efforts to comply with the requirements of the Ordinance and have taken prompt remedial measures upon being alerted of possible contravention of the Ordinance. The public education efforts of the SRPA make prospective purchasers of first-hand residential properties more aware of their rights.

9. There were occasions when the sales arrangements adopted by individual vendors in respect of various first-hand residential properties have caused public concern. The SRPA reacted promptly and firmly on those occasions (including conducting investigations and at the same time reminding prospective purchasers through the media). The SRPA's quick response has prompted the vendors concerned to make effective improvement and/or take remedial measures under most of the circumstances and heightened the alertness of prospective purchasers to the sales arrangements of the developments/phases concerned.

10. There has been a smooth supply of first-hand residential properties since the Ordinance has come into implementation. In the period from the full implementation of the Ordinance on 29 April 2013 to 31 March 2016, vendors have offered to sell about 42 400 first-hand residential properties in about 230 residential developments/phases. The breakdown in terms of calendar year is as follows:

Year	Number of first-hand residential properties offered for sales by vendors
2013 (since 29 April 2013)	8 295
2014	15 944
2015	16 423
2016 (as at 31 March 2016)	1 703
Total	42 365 (Around 42 400)

11. The Ordinance has struck a balance between enhancing the transparency and fairness in the sales of first-hand residential properties, and allowing vendors the flexibility in making business decisions and disposing of their properties lawfully.

Work of the SRPA

Compliance checks on sales documents

12. The SRPA examined the sales brochures, price lists, documents containing the sales arrangements, registers of transactions and the designated websites which were made available to the public by vendors. Also, the SRPA examined printed advertisements on first-hand residential properties in major local newspapers, and other forms of printed promotional materials on first-hand residential properties.

13. As at 31 March 2016, the SRPA examined about 850 sales brochures, about 2 600 price lists, about 2 200 documents containing the sales arrangements, and about 8 900 printed advertisements. Also, the SRPA conducted about 3 300 inspections on registers of transactions. The SRPA also conducted regular inspections on vendors' designated websites.

Inspections to sales offices and show flats

14. The SRPA has inspected all of the sales offices and show flats of first-hand residential properties which are open to the public on or after 29 April 2013. As at 31 March 2016, the SRPA conducted about 2 600 inspections on those sales offices and show flats, including those jointly conducted with the Estate Agents Authority (“EAA”).

Handling enquiries

15. As at 31 March 2016, the SRPA received about 4 000 enquiries.

16. The enquiries were made by vendors, stakeholders relating to the sales of first-hand residential properties such as conveyancing solicitors and authorised persons, and members of the public. The enquiries were diversified in nature, including the application of the Ordinance, the interpretation of specific provisions of the Ordinance, and how individual first-hand residential developments/phases may comply with the Ordinance. The SRPA has promptly responded to enquiries which are straight-forward in nature, and has responded to the majority of those more complicated enquiries within 21 days from the date of receipt of the enquiries. For enquiries on subject matters which deserve the attention of the trade, the SRPA has issued Frequently Asked Questions and Answers (“FAQs”) to bring the issues to the attention of the trade.

Handling complaints

17. The SRPA has replied to complaints of a straight-forward nature within 21 days from the date of receipt of the complaint. For complaints of a complicated nature, the SRPA will have to collect evidence and conduct investigations, and may have to seek the advice of the Department of Justice (“DOJ”) in the process. If a substantive reply cannot be made within 21 days from the date of receipt of the complaint, the SRPA will inform the complainant in writing on or before the prescribed due date for a substantive reply and inform the complainant the progress of the complaint case on a monthly basis.

18. As at 31 March 2016, the SRPA received 177 complaint cases. 138 complaint cases are related to the Ordinance while the remaining 39 complaint cases are not. A breakdown in terms of the objects of the complaints is set out below:

Objects of the complaints	Number of complaint cases received
Sales brochure	31
Price list	5
Sales arrangements	30
Show flats	1
Viewing of completed residential properties	6
PASP and/or ASP	2
Register of transactions	3
Advertisements	28
Website	1
Misrepresentation and/or dissemination of false or misleading information	31
Others	39 ^{Note}
Total	177

Note: The 39 complaint cases are on matters outside the purview of the SRPA.

Investigations and prosecutions

19. It is the function and work of the SRPA to conduct investigations on whether the vendors or any persons are suspected to have contravened the Ordinance. The authority to decide whether there is sufficient evidence to prove whether the vendors or any persons are suspected of having contravened the Ordinance and whether prosecution action is to be taken is vested with the Prosecutions Division of DOJ.

20. The SRPA spared no effort in implementing the Ordinance and carrying out investigations on persons suspected of having contravened the Ordinance. The SRPA carried out investigations on suspected contraventions of the Ordinance detected during compliance checks and inspections and those arising from complaints or media enquiries. The SRPA looked into cases which were suspected of contravening the Ordinance seriously. It takes time to conduct investigations and collect evidence. The SRPA has been referring investigation reports on suspected contraventions to the Prosecutions Division of DOJ for consideration. DOJ is considering the matter and will inform the SRPA of the decision.

21. As at 31 March 2016, prosecution action has been taken against a vendor of a development involving 19 counts of offence.

22. For cases involving estate agents, the SRPA would, apart from conducting investigations on whether the estate agents concerned have contravened the Ordinance, refer the case to the EAA for follow up action in parallel.

Issue of guidelines

23. According to section 88(1) of the Ordinance, the SRPA may issue guidelines. As at 31 March 2016, the SRPA has issued 6 sets of guidelines covering matters on sales brochures, price lists, sales arrangements, register of transactions and how to submit documents to the SRPA and the SRPE.

Educating the public on matters relating to the Ordinance

24. Educating the public on matters relating to the Ordinance is one of the SRPA's three pillars of work to ensure the transparency and fairness of the sales of first-hand residential properties (the other two pillars of work are compliance checks and inspections, and investigation work).

25. The SRPA helps vendors and related parties (e.g. solicitors, architects and surveyors) to understand the requirements of the Ordinance on the one hand, while on the other hand facilitates prospective purchasers/purchasers of first-hand residential properties to understand the protection they enjoy under the Ordinance.

(i) Facilitate vendors and related parties to understand the requirements of the Ordinance

26. The SRPA has issued practice notes and FAQs, and organised workshops for the trade. As at 31 March 2016, the SRPA has issued 8 sets of practice notes and 126 FAQs to the trade. The SRPA will continue to maintain close liaison with vendors, related parties and relevant stakeholders to understand their concern and to exchange views.

27. The SRPA wishes to emphasise that, when a vendor is suspected to have contravened the Ordinance in the action of sales, the remedial measures taken by the vendor afterwards will not change the fact that the vendor is suspected of having contravened the Ordinance in the previous action of sales. The SRPA will still follow up those cases of suspected contravention of the Ordinance.

28. The SRPA attaches importance on whether the sales arrangements adopted by the vendors are in line with the principles of transparency and fairness. For sales arrangements which do not contravene the Ordinance but may possibly cause order problem and affect purchaser's interest, the SRPA will advise the vendors concerned on improvement measures and issue guidelines to the trade. In most circumstances, vendors have accepted the advice of the SRPA and improved the sales arrangements.

(ii) Public education

29. The SRPA attaches importance to promoting the awareness among the general public on the protection provided by the Ordinance to prospective purchasers. The SRPA website, the SRPE as mentioned in paragraph 5(e) above, and the SRPA Resource Centre¹ provide prospective purchasers and members of the public with access to information useful to them. As at 31 March 2016, there were on average about 15 000 visits per month and 27 000 visits per month to the SRPA website and the SRPE respectively.

30. The SRPA keeps on enhancing the functions of the SRPE. At present, visitors to the SRPE may search for information on developments/phases conveniently and efficiently by categories of the district, the first date of printing of the sales brochures, or the sales status of the developments/phases (i.e. being offered for sales/pending for sales/sales suspended/sales terminated). Also, the SRPE allows searching for developments/phases which the vendors have uploaded the first edition of the sales brochure and/or any price lists onto the SRPE in the past 30 days. It provides hyperlinks to the websites designated by vendors for the developments/phases.

31. Besides, the SRPA has published the "Notes to Purchasers of First-hand Residential Properties" to remind prospective purchasers of the issues they should pay particular attention to when purchasing first-hand residential properties. Also, the SRPA has published a leaflet to set out in layman terms the major requirements of the Ordinance. There are FAQs for prospective purchasers in the SRPA's website. Announcements in the Public Interest (API) are broadcasted on TV and radio channels to remind prospective purchasers to think thoroughly before signing a PASP. The SRPA has also from time to time issued

¹ The SRPA Resource Centre keeps hard copies of the sales brochures and price lists for individual first-hand residential developments/phases, the sales of which are subject to the Ordinance. Also, visitors may use the computer terminals in the Resource Centre to browse the SRPE and the SRPA website.

advice to prospective purchasers through the media.

32. For suspected contraventions of the Ordinance or undesirable situations which may possibly affect prospective purchasers' interest seriously, the SRPA will, while carrying out investigations, alert prospective purchasers of the situations through the media in the first instance. As at 31 March 2016, the SRPA has issued reminders to the public on 14 occasions in respect of the sales of first-hand residential developments/phases.

Motivate and encourage vendors to go the extra mile

33. We cannot solely rely on the deterrent effect of the Ordinance to achieve the goal of continued enhancement of the transparency and fairness of the sales of first-hand residential properties. The mindset and the initiative of the trade are of the same importance. The SRPA has all along been proactively motivating and encouraging vendors to, in addition to complying with the requirements of the Ordinance, aim for a win-win situation and go the extra mile whenever possible. For example, the SRPA has advised vendors to display a "consumption table" in a conspicuous place in the sales office of a development/phase and to update the "consumption table" at the appropriate time to reflect the sales situation, though there is no such requirement under the Ordinance. The objective is to enable prospective purchasers at the sales office to easily know the residential properties which are still available for them to select at that particular point of time. The SRPA's observation during the inspections to the sales offices was that, subsequent to the SRPA's advice, "consumption tables" of the developments/phases were displayed in most of the sales offices of first-hand residential properties.

Looking ahead

34. Based on operational experience, the SRPA deems it necessary to deploy more resources than it has originally expected on the work relating to investigations and the collection of evidences. The SRPA has received additional resources to create not more than 10 posts from the financial year 2016-17 onwards. Those additional posts are mainly responsible for conducting investigations and collecting evidences. The new posts comprise officers from the Building Surveyor, Estate Surveyor, Executive Officer, Housing Manager and Survey Officer grades.

35. The SRPA expects more new challenges ahead, given that more and more first-hand residential properties will be offered for sales. The SRPA will continue to step up its efforts to conduct compliance checks and inspections, handle complaints, conduct investigations, collect evidences, and educate the trade and the public, with a view to further enhancing the transparency and fairness of the sales of first-hand residential properties, strengthening consumer/purchaser protection, and providing a level playing field for vendors of first-hand residential properties.

**Transport and Housing Bureau
Sales of First-hand Residential Properties Authority
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