

HONG KONG INSTITUTE OF REAL ESTATE ADMINISTRATION

Opinion on the Consultation Paper on the Sales Descriptions of Uncompleted Residential Properties Bill

(for presentation to the LEGCO Bills Sub-committee on 2000/5/16)

We support in principle to the objective of the draft Bill with a view to enhance the accuracy, uniformity and transparency of information provided in sales brochures and advertisements. However, we are of the view that many of the requirements are over-regulated leading to more possible disputes and we do not concur to some of the definitions under the Provisions Relating to Sales Brochure.

In fact, most of the disputes in the past were related to floor areas only. We have experienced very little complaints from consumers concerning standard of finishes and fittings, time of dispatch of price list, contents of DMC or advertisement etc. We do not see the reasons why all these details should be incorporated into an ordinance rather than through a set of guidelines or Code of Practice issued by the Housing Bureau or the Consumers' Council.

Our major comments of the Bill and suggestions of change are : -

The Bill

2. Interpretation

“uncompleted residential property”-

Some exempted developments in the New Territories developed before 70s' do not have exemption certificates and letter of no objection to occupy since they were not required at that time. Even today, letter of no objection to occupy was not required under lease. These houses would otherwise be treated as uncompleted residential flats. The proposed bill has not addressed to this issue.

“gross floor area” –

We do not agree to the definition of GFA which would create confusion and considerable impact to the property market.

Of course we do concur to standardize the computation of the floor area of a residential unit and to discourage exaggerated and unfounded computations.

However, we must point out that this definition would give rise to a multiple price situation in the market thus creating confusion. The term 'gross area' or 'gross floor area' has been traditionally and loosely used in the market to describe the aggregate of

the saleable area, a share of the accountable (for Plot Ratio) common area, a share of some exempted areas which may include caretakers room, carpark lift lobbies, internal air-con rooms or recreational club areas. These areas are usually enclosed, properly finished and often air-conditioned and are commonly accepted to be partly shared by individual units in the market.

We propose that such term for a residential unit should be revised to ‘Unit Gross Floor Area 單位建築面積’ or ‘Unit Building Area 單位樓面面積’.

We also suggest that the ‘UGFA’ of a unit should be allowed to include some of the exempted areas as aforesaid provided that **the portion of such exempted area must be clearly stated.** Besides, the component and the total of such exempted areas must be clearly listed in a separate schedule along with the approved ‘Gross Floor Area’ under the provisions of the Building Regulations. As such, consumers can easily work out the portion of each unit which are accountable for Plot Ratio if desired. At the same time, the UGFA as suggested is more or less consistent with the current market situation.

Otherwise, upon completion, the ‘floor area’ of these flats under the new Bill will be very inconsistent with the commonly accepted ‘floor area’ of the over a million existing completed flats. Thus creating confusion in the valuation of unit price of residential flats in the property agency trade and financial institutions.

A balance has to be strike between choosing a theoretically clear indication of “Total Area” for the uncompleted properties to be put on sale, and the maintenance of a firm and commonly adopted norm of area reference for the residential units now in the market being shouldered by the respective owners, who, after the new (or chaotic) references are introduced, will be suffering most from second hand transactions and mortgages arrangements.

Besides, in order to work out a unit price comparable to that of completed flats, developers would create another definition to describe the area of a flat including shares of some exempted areas (say for instance-Unit Building Floor Area or Construction Area) thus giving rise to a **multi-area and multi-price situation** confusing consumers.

11. Provisions relating to sample flats

Internal dimensions of actual flats would differ with different levels. There should be a reasonable tolerance for accuracy of dimensions of internal space adjoining structural walls if purchasers are properly cautioned.

SCHEDULE 1

4. Location Plan

Some land use in adjacent areas, like for instance ‘Comprehensive Development Area’ or ‘Other Use’, can change inevitably in no time without sufficient notice to the developer once the brochure is published. Public transport stations can be relocated by the Transport Department quite frequently. Small parks or refuse collection points can be inconspicuous and overlooked or abolished. There is a certain time lapse for a developer to collect all information required to the publication of the brochure, in which the land use or the aforementioned information may change, thus creating confusion to consumers and attracts disputes.

We therefore suggest that a **‘Cut-off-date’** for the gathering of information before the publication date should be established for this purpose and **1 month** seems to be a reasonable time. As a security to consumers, prescribed notice should be annexed to the plan cautioning readers to obtain updated information from relevant government departments upon their decision to purchase.

5. Disposition Plan

We agree that developers should give as early as possible accurate and detail information to purchasers. However, the details regarding location, layout structures and dimensions etc. required for a large development, which may be developed in phases over a few years, would deny developers the flexibility to make amendments to the development scheme responding to prevailing market situation or unforeseen changing conditions. We suggest that **provisions for subsequent amendment of the development scheme** should be incorporated.

6. Floor Plan

We suggest that **minimum dimensions of certain critical areas in the unit** should be indicated. This will give the purchase essential information regarding suitability and usability to satisfy their spatial requirements, like for instance, the width of a small room at the lowest floor adjoining the structural wall. As such, the argument of the necessity to indicate ‘internal floor area’ is unfounded. The proposed indication of walls (including columns) thickness is able to solve the problem without going into more complicated forms of calculation, e.g. an internal floor area, which can only confuse consumers rather than helping them.

15. Price List

Developers will set the price list in accordance with market sentiment that will change

rapidly. It is not practical to demand the developer to set and dispatch the price list seven days before the actual sale.

32. Finished and fittings

It would be difficult for developers to ensure that all details, such as the availability of the prescribed fitting and finishes to be frozen before completion of development.

We opine that whether the replacement of such fitting and finishes is equivalent to the original described in the sales brochure should be a dispute under normal contract law rather than whether it is an offence under an ordinance.

SCHEDULE 2

CALCULATION OF GROSS FLOOR AREA

The aggregate of GFA of all units should be the total domestic GFA calculated in accordance with the permitted domestic Plot Ratio under Building Regulations.

However, it is ambiguous that under item 7(2), the GFA of a property includes some areas like plant rooms, refuse collection or recreational spaces which are exemptable under Building Regulations. This should be clarified.

Moreover, the term 'Gross Floor Area' of a residential unit (commonly taken as the building floor area of a unit including some exempted areas in the existing property market - 建築面積 in Chinese) is identical to the term 'Gross Floor Area' s define in the Building Regulations as the total floor area of a building (總樓面面積 in Chinese) under the permitted Plot Ratio. This would create confusion especially in agreements in English.

There are also ambiguous circumstances that certain areas exempted by the Building Authority are actually part of salable area (e.g. thickness of curtain wall, internal air-conditioning plant rooms). We suggest that a detail study on the calculation of gross floor area for the purposes of sales brochure be conducted by the Housing Bureau, the Building Authority, the Lands Department and all professional bodies before a final standard is adopted.

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