

**Consultation on the Sales Descriptions of Uncompleted Residential
Properties Bill**
Comments by the Hong Kong Institute of Architects

A. Introduction

The aim of the Institute in considering the contents of this Bill is to ascertain that the best interest of the consumers has been met. Our experience as project team leaders in the building construction process of residential flats leads us to conclude that consumers' best interest would be protected only if the future Ordinance can achieve the following :

1. to provide the best possible information of the uncompleted flats to the consumers;
2. to prevent consumers from being confused or misled by non-standardized and non-authorized information; and
3. to permit consumers to utilize and to accept as standard the information which is prescribed under the Building Ordinance and under the supervision of the Authorized Person.

After detailed study of the contents of the Bill, we consider that a number of amendments would improve the chance of achieving the above. We would be most pleased to work with the law drafters and any parties involved to hammer out the final version of this Bill.

B. Our Comments

1. *Our idea of the best information for consumers would mean:*
 - a. Consumers should be receiving the same information as the Building Contractor and which is also the same information as approved by the Building Authority, namely the copy of the approved General Building Plans.
 - b. Consumers should be guided to understand the General Building Plans in terms of the distinction between structural and non-structural

constructions as well as the probable thickness of surface finishes.

- c. Therefore, HKIA sees that it has a responsibility and at the same time would be in the best position to work with Consumer Council or any other consumer organizations to explain in simple terms what the consumers need to know in order to protect their own rights. For instance, there can be a simple booklet prepared jointly by HKIA and Consumer Council to explain key information or definition given in the Sales Brochure.

2. *Use of prescribed information under the Building Ordinance:*

- a. It is noted that the Buildings Department is the lead Government Department responsible for enforcement of the Bill. We should therefore always try to use Buildings Plans and B.D.'s calculations as the standard to go by.
- b. The definition of "gross floor area" should be consistent with the Building Ordinance to avoid misunderstanding.
- c. The certificate signed by the Authorized Person upon completion of the flat is to certify the approved area of the flat under the latest approved General Building Plans.
- d. "Plans" defined in the bill should be referring to the latest approved General Building Plans for projects not under the Housing Authority.

3. *Information which is confusing or misleading is to be avoided :*

On area information to be provided in Schedule 1, it is proposed that there should be the following distinct categories of areas :

- a. Saleable area as defined in Schedule 3 of the Bill;
- b. Gross Floor Area as defined in Schedule 2 of the Bill; and
- c. Building area (as distinct from gross floor area) : portion of common areas which are non-accountable GFA under the Building Regulations but which a developer may wish to include eg. M/E plant rooms, clubhouse, estate management offices etc
- d. Areas for bay window, yard etc as defined in Schedule 4 of the Bill.

Currently, some developers define Gross Area as Gross Floor Area whereas other

developers may define Gross Area as a combination of Gross Floor Area and Building Area. This creates anomaly and confusion to consumers. The proposed amendment should help to minimize to a large extent this confusion.

4. *Other key considerations :*

a. Building Tolerance:

Whilst the stated purpose of Bill is to address on the issue of sales description of uncompleted properties, it is perhaps also important to address on the issue of the finished product, ie when the flats are completed and are to be handed over to consumers. HKIA respectfully wishes to point out that whilst every attempt can be made by developers, consultants and the contractor to provide the consumers with the same dimensions in the finished flat as are given in the Sales Brochure, consumers would need to appreciate that within the Building Industry a certain degree of tolerance to the dimensions is unavoidable and is therefore allowed. This issue of tolerance would need to be further discussed with other members of the Building Team and hopefully could be incorporated into the Bill.

b. Alternative finishes and fittings:

Whilst HKIA recognizes the need for consumers to be fully informed of the details of the finishes and fittings to be provided under the Schedule of Finishes and Fittings, it is concerned that the provision in the Bill for the Authorized Person to certify alternatives as of equivalent standard would be difficult to implement. It is recommended that consumers instead should be informed of the changes and the consumers could then decide whether the changes are acceptable or not.

c. Phasing of Development:

HKIA requests that clarification/amendment should be provided to the term 'Development' as described in Schedule 1 and as defined in Section 2. Many of the large residential development are phased. The requirement in the Bill for the number and the disposition of all buildings within the Development site boundaries to be shown would create hardship to architects and developers. The concern is that the information provided for the later phases may be changed due to different market conditions at the time. A flexible approach should preferably be drafted into the Bill.

d. Change to information provided:

The more information provided to consumers, the more expectations will be generated on the part of the consumers so that changes by the developer will cause discrepancies with such expectations and therefore more disputes will occur. The Bill should therefore set up the appropriate mechanism so that the information of the changes, which are mostly executed by the A.P./architect, could be conveniently channeled to the notice of the readership of the sales descriptions.

C. Suggested Amendments and Clarification Items:

1. *Section 2, Interpretation.* All “Building Plans” referred in the Bill should mean General Building Plans rather than any plans submitted to the Building Authority.
2. *Schedule 1, Section 4, “Location plan”.* It is unclear if all areas at a distance of 0.5km around the site has to be shown, and whether the list of communal facilities as stated is an exhaustive list. It is not absolutely clear if the entire site boundary or any group of buildings inside the site, as governed by the Master Layout Plan would be included in the definition of “the development” and has to be shown in the Location plan.
3. *Schedule 1, Section 6(5)(c),* it is not clear whether the dimensions of the columns should be shown together with the load bearing walls. Also, the phrase “Ground floor” is likely to cause confusion and is not appropriate for many developments.
4. *Schedule 1, Section 6(5)(d),* the meaning of “exposed pipes” could be subject to many different interpretation.
5. *Schedule 1, Section 7(2),* the meaning of “gross floor area” should be Gross Floor Area as defined under the Building (Planning) Regulations. The use of this gross floor area definition would serve to provide the necessary protection to the consumers because of its well-defined content and its legality. While the Gross Area which is commonly used by the developer can be provided as additional information. Gross Area or a better term would be ‘Building Area’

includes those areas not accountable under the Building Regulations such as lift machine room, refuse room, E/M rooms, carparks etc.

6. *Schedule 1, Section 7(4)(b)*, the meaning of “completion of construction” would require definition. A more convenient way to define the time is to use the date of submission of application of Occupation Permit by the authorized person.
7. *Schedule 1, Section 15(3)*, Liabilities of Directors. It is not clear under this section as to the status of the employees of the Housing Authority who might be acting as the Authorized Person or persons directly responsible for the provision of the sales information. Are they free from all liabilities?
8. *Schedule 1, Section 25*, it would be difficult to provide definite completion dates on areas which are not under the direct control of the developer. It is proposed that an indicative date of completion may be given. In addition, the Building Covenant date under lease will be provided as a safeguard to the consumers.
9. *Schedule 1, Section 32(2)*, equivalent standard in materials is sometimes very subjective. This clause would provide a easy way out for the developer to change the product but would leave authorized person with a harsh decision to make. The consumers should be informed of the changes and they should decide whether the changes are acceptable or not.
10. *Schedule 1, Section 33*, fees for preparation of the assignment plan by the authorized Person of the development should be added as (c)(iv).

Submitted by HKIA

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