

The HKIE's Comments on the White Bill on Sales Description of Uncompleted Residential Properties

General

1. HKIE strongly supports the objective of the Bill. Protection of property purchasers is long overdue and is essential to a contented and stable society. In addition, we believe that the legal provision of requirements on the accurate descriptions of uncompleted residential properties will add impetus to improving the quality of new buildings and to strengthening the building maintenance culture. Good project management practice can help identify responsibilities, which is necessary for quality management. A satisfied property purchaser is more likely to engage in serious building maintenance voluntarily.
2. We suggest that the proposed legal framework in the White Bill can be strengthened in four aspects so as to better ensure the disclosure of requisite information for the fair and just proceedings of sale and purchase of uncompleted properties. We also have two suggestions to facilitate the administration of the proposed law.

Disclosure of Contractual Obligations

3. There should be a new requirement on the developer to give a full disclosure of any contractual obligations of one or more units of the development which will result in mismatch of the rights to use, ownership of, and responsibility to maintain any part of the building. Three examples will illustrate the need for this requirement.
 - (a) Example 1 The developer may have sold the right to use the surface of the external wall by an advertising company. Yet a potential purchaser of a flat which is partly bounded by this external wall may not be aware that ownership of the flat only entails responsibility to maintain the wall, but not the right to use its external surface.
 - (b) Example 2 A part of a building may have been dedicated for public use in exchange for bonus plot ratio which is used in another building of the same development. Development rights of certain owners are therefore restricted due to obligations to others.
 - (c) Example 3 The developer might have agreed to construct certain works within the development for Government or the adjoining lot in order to facilitate the planning or construction process. Such works may affect a few units but the obligations may not have been included in the documents listed in Sales Descriptions.
4. In the above examples, the obligations do not seem to fall under any of the items of Schedule 1. In fact, it is neither possible nor necessary to require all obligations to be listed in the Sales Descriptions. But it is both reasonable and practicable that the developer discloses those contractual obligations, either

implicit or explicit, which he has made or committed to on behalf of the development.

Circumstances Rendering Contract Void and Null

5. We consider the new law should provide the option for a purchaser to rescind a contract of sale and purchase if the contract is consequent of a public sale and the sales descriptions contain:-
 - (a) significantly inaccurate or incorrect information on the dimensions of the saleable area or gross floor area; or
 - (b) no information on the saleable area; or
 - (c) incomplete or no disclosure of liabilities under Government lease and deed of mutual convenient; or
 - (d) no or incomplete disclosure of contractual obligations which may affect the rights and responsibility of the owner of the flat in question.
6. The above circumstances should automatically render a contract void and null unless the developer can prove that the circumstances are beyond his control. It is essential to protect the purchaser from having to buy a property as a result of being misled by invalid sales description. Normal construction tolerances seldom results in more than 10% deviation from the design dimensions. It is thus only fair and just that the developer is obligated to allow a purchaser to rescind the agreement to purchase if there is significant deviation of the actual unit from the descriptions given to the purchaser at the time of purchase.
7. We suggest S.17 of the White Bill should be modified to take account of the above comments. It would be unjust to require a law-abiding small purchaser to fight a legal battle when it is the developer's contravention of the provisions of the law which has led to his suffering a loss.

Defence for Non-compliant Advertisement

8. In the same vein, we consider S12 (6) should be deleted. Advertisement is an important factor in most people's decision process to spend their life-long savings on purchasing a residential property. A responsible advertising agent should be reasonably sure that the content does not contravene any statutory requirements before publishing the advertisement. Defence for a person charged with publishing a non-compliant advertisement should be limited to the provision in S12 (7), viz., that compliance is impracticable.
9. We appreciate that some small advertising agent may have difficulty in keeping abreast of the changing statutory requirements. Such difficulty can be removed if Government provides certain facilities as suggested in para 12 & 13 below.

Cooling-off Period

10. We suggest to introduce a "cooling-off period" during which a purchaser is allowed to cancel a contract of sale and purchase without penalty. To most people, purchasing a home is the most important investment decision. Yet the decision now often has to be made in a short time at the sales office. A wrong decision is not only regretful to the purchaser, but also wasteful of societal resource.

11. Therefore it would be in the overall interest of the society that a purchaser should be given the opportunity to review the implications of the sales descriptions and his purchase on such terms during the cooling-off period before firming up his decision. This cooling-off period may be set by the Secretary by giving due notice in the Gazette. Initially the period could be set at two weeks, having regard to certain overseas experience.

Providing a List of Statutory Requirements

12. To help ensure success of the new law in protecting property purchasers, we suggest that Government considers providing a list of the relevant laws governing the obligations of the developer and his advertising agents, and the obligations and rights of a property owner. As it is government policy to promote housing ownership, the number of first-time owners will continue to rise. Most of them need authoritative information on the statutory obligations and rights of a property owner before they enter into an agreement to purchase. The small developers and their agent may also sometimes have difficulty in keeping abreast of all the laws and regulations which are applicable to the ownership, development and sale of land and building. Problems may arise because of lack of knowledge of some of the statutory requirements. For example, the powers of owners' corporation and the management company or the right of an owner to dispute their decision may not be fully known to most people.
13. Government's assistance can be in a form similar to the Practice Notes to Authorised Persons issued by the Buildings Department. This will help the implementation of the Bill especially the awareness of Schedule 1 and hence its usefulness to property purchasers. In turn, this will minimise complaints and the ensuing administrative work of all parties concerned. Non-provision of this facility will cause unnecessary confusion to the lay public and will detriment the protection of property purchasers.

Ownership and Responsibility for Structure between two Units

14. Finally, we suggest that it is time for Government to address the issue of maintenance responsibility for walls and floors between two units. While the saleable area is clearly defined in the Bill, the ownership and hence responsibility for the floor structure separating the upper and lower units is not clear. This point has been the source of conflict in some older buildings. For example, defects may be caused by the upper unit resident but repair has to be carried out in the lower unit, or vice versa. Or, the two units cannot come to agreement on preventive maintenance action.
15. Similarly, clarification is needed for dealing with a wall separating two units. We appreciate that this difficult issue has ramifications not only to the proposed Bill, but also other laws, e.g. Buildings Ordinance, Building Management Ordinance. We would urge Government to deal with this and other "interfacial" issues. The HKIE would welcome the opportunity to assist.