

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 latest 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, show flats, disclosure of transaction information, advertisements, sales arrangements, and the mandatory provisions for the preliminary agreement for sale and purchase (PASP) and agreement for sale and purchase (ASP) for the sale 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. To ensure the Ordinance is implemented efficiently, the Transport and Housing Bureau established the SRPA. The SRPA undertakes tasks which include the following:

- (a) monitor whether vendors and related parties are complying with the Ordinance;
- (b) issue guidelines for stakeholders;
- (c) handle complaints and public enquiries;
- (d) conduct investigations on cases of suspected contravention of the Ordinance;
- (e) educate the public on matters relating to the provisions of the Ordinance; and

- (f) 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 sale of first-hand residential properties as set out in the Ordinance are to primarily address the undesirable situations in the sale of first-hand residential properties in the past which the public has denounced. For example, it was then difficult for prospective purchasers to have a clear idea of the area of a residential property which they could make use of as vendors in general presented the area of a residential property in terms of the “gross floor area” of the residential property; vendors in general were then putting emphasis on making available the modified show flats as a means to attract prospective purchasers; and it might not be convenient then for prospective purchasers to have access to all kinds of sales documents. 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; and
- (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.

7. The SRPA considers that the Ordinance has been effective in facilitating prospective purchasers of first-hand residential properties to get hold of information in relation to those first-hand residential properties which are offered for sale and the relevant transaction information in the first-hand residential property market. As a result, prospective purchasers of first-hand residential properties are more aware of their rights. Moreover, 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.

8. 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 investigation and at the same time reminding prospective purchasers through the media). The SRPA's quick response has prompted the vendors concerned to take effective improvement and/or remedial measures under most of the circumstances and caused potential purchasers to be more alert to the sale arrangements of the developments/phases concerned.

9. There is a smooth supply of first-hand residential properties in the past two years since the Ordinance has come into implementation. In the period of about two years from the full implementation of the Ordinance on 29 April 2013 to 31 March 2015, vendors have offered to sell about 27 900 first-hand residential properties in about 160 residential developments/phases. About 25 500 first-hand residential properties were sold (i.e. the parties have either signed the PASPs or have signed both the PASPs and the ASPs). In 2014, vendors have offered to sell about 15 900 first-hand residential properties.

10. 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

11. Since the full implementation of the Ordinance, the SRPA has examined all the sales brochures (including the revised sales brochures), price lists (including the revised 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 has examined printed advertisements on first-hand residential properties in major local newspapers, and other forms of printed promotional materials on first-hand residential properties.

12. As at 31 March 2015, the SRPA examined about 760 sales brochures, about 1 900 price lists, about 1 100 documents containing the sales arrangements, and about 6 200 printed advertisements. Also, the SRPA conducted about 2 600 inspections on registers of transactions. The SRPA conducted regular inspections on vendors' designated website.

Inspections on sales offices and show flats

13. 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 2015, the SRPA conducted about 2 000 inspections on those sales offices and show flats, including those jointly conducted with the Estate Agents Authority (EAA).

Handling enquiries

14. As at 31 March 2015, the SRPA received about 2 800 enquiries.

15. The enquiries were made by vendors, stakeholders relating to the sales of first-hand residential properties such as conveyancing solicitors and authorized 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

16. 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 would have to collect evidence and conduct investigation, 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 would inform the complainant in writing on or before the prescribed due date for a substantive reply and provide the complainant with the progress of the complaint case on a monthly basis.

17. As at 31 March 2015, the SRPA received 119 complaint cases. 86 complaint cases are related to the Ordinance while the remaining 33 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	17
Price list	2
Sales arrangements	25
Show flat	0
Viewing of completed residential property	5
PASP and/or ASP	1
Register of transactions	2
Advertisement	10
Website	1
Misrepresentation and/or dissemination of false or misleading information	23
Others	33 ^{Note}
Total	119

Note: The 33 complaint cases were on matters outside the purview of the SRPA.

Investigations and prosecutions

18. 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.

19. 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. It is not the proper time to disclose the details at this stage.

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

Educating the public on matters relating to the Ordinance

21. 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).

22. The SRPA facilitates the trade to understand 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

23. The SRPA spares no effort to help vendors and related parties (e.g. solicitors, architects and surveyors) to understand the requirements of the Ordinance. Guidelines, Practice Notes and FAQs have been issued to the trade. Workshops have been organised for the trade. As at 31 March 2015, the SRPA has issued 126 FAQs to the trade. The SRPA is consolidating and further categorising the FAQs with a view to facilitating the trade to search the required FAQs more efficiently. The

SRPA maintains close liaison with vendors, related parties and relevant stakeholders to understand their concern and to exchange views.

24. The SRPA wishes to emphasize that, when a vendor is suspected to have contravened the Ordinance in the action of sale, 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 sale. The SRPA will still follow up those cases of suspected contravention of the Ordinance.

25. The SRPA attaches great importance on whether the sales arrangements adopted by the vendors are in line with the principles of fairness and transparency. 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) Co-operate with the EAA to facilitate estate agents to understand the Ordinance

26. Estate agents play an important role in promoting the sales of first-hand residential properties. Prospective purchasers/purchasers in general rely heavily on the information provided to them by estate agents. In view of the above, the SRPA has collaborated with the EAA to organise two seminars under the EAA's Continuing Professional Development Scheme for estate agents in March 2015. The seminars aim to enhance the awareness of estate agents, especially those small-to-medium sized estate agency companies and frontline practitioners, on the Ordinance and the EAA's Practice Circulars in respect of the sales of first-hand residential properties. At the seminars, the representative from the SRPA reminded estate agents of several issues, including reminding them to ensure the accuracy of the information in any of the promotional materials before publication, appealing to them to remind prospective purchasers to think carefully before signing a PASP to avoid financial loss arising from the forfeiture of the preliminary deposit, and advising them to be more thoughtful about their clients' interest and cherish a sustainable relationship with their clients.

(iii) Public education

27. 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(f) above, and the SRPA Resource Centre¹ provide prospective purchasers and members of the public with access to information useful to them. As at 31 May 2015, on average, there were around 440 visitors to the SRPA website every day, and around 900 visitors to the SRPE every day.

28. The SRPA keeps on enhancing the functions of the SRPE, such as adding search function in terms of the first printing date of sales brochures, the district of the developments/phases, or the sales status of the developments/phases (being offered for sale/ pending for sale/ sales suspended/ sales terminated) to assist members of the public to search for information of the developments/phases more efficiently. Other new functions include highlighting those developments/phases which have updated sales brochures and/or price lists newly uploaded to the SRPE, and providing hyperlink to the websites designated by vendors for the developments/phases.

29. 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 on vendors. There are FAQs for prospective purchasers in the SRPA's website. Announcements of Public Interest (API) on the implementation of the Ordinance are broadcasted on TV and radio channels, and on various other media channels. The SRPA launched a new TV and radio API in September last year to remind prospective purchasers to think carefully before signing a PASP.

30. For situations which are suspected of having contravened the Ordinance or which are undesirable and which will 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 2015, the SRPA has

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

issued reminders to the public on 13 occasions in respect of the sales of individual first-hand residential developments/phases.

Sales matters of public concern

31. The SRPA has all along attached importance to the opinions and concerns of the Legislative Council Panel on Housing, the Consumer Council, prospective purchasers/purchasers of first-hand residential properties, related parties and members of the public in respect of the sales of first-hand residential properties by vendors and any person. The SRPA has noticed that there are issues relating to the sales which are of concern to the public, including that there is an inflated number of registrations of intent in the sales of first-hand residential properties, that prospective purchasers/purchasers may have difficulty in getting hold of information on which residential properties are available for selection in a development/phase on each date of sale, and that vendors do not offer to sell all the residential properties the prices of which have been set out in the price list(s) in one go but by batches.

(i) New measures to enhance the transparency of the number of the registrations of intent

32. The SRPA has been keeping a watchful eye on the inflated number of registrations of intent in the sales of first-hand residential properties. The SRPA has been reminding prospective purchasers that the register of transactions for a development/phase is the most reliable source of information which the public can get hold of the sales situation of a development/phase on a date of sale. Prospective purchasers should be cautious in making reference to hearsay information from vendors or the market regarding the number of registrations of intent received before the date of sale. They should not take the figures as an indicator of the sales volume of a development/phase.

33. In the past few months, the EAA conducted inspections frequently and repeatedly reminded estate agency companies not to make loans to prospective purchasers. The EAA has announced that, in view of the situation that there are estate agents submitting registrations of intent for themselves for balloting in a development/phase which they are involved in the sales activities, it is considering to require estate agents who have done so to declare, with a view to enhancing the transparency of the sales and strengthening the corporate management of estate agency companies.

34. The SRPA is working hand in hand with the EAA on the matter. When the EAA has finalised the arrangement for estate agents to declare the submission of registrations of intent, the SRPA will issue a practice note to vendors to require that when vendors make public the number of registrations of intent or cashier orders received for a development/phase, they should also make public at the same time the number of registrations of intent which estate agents are the registrants.

(ii) New measures to further facilitate prospective purchasers/purchasers to get hold of the sales situation of first-hand residential properties

35. To further facilitate prospective purchasers/purchasers to get to know which first-hand residential properties are available for selection on each date of sale and at different time of the day, the SRPA will issue a practice note to require vendors to display in the sales office of a development/phase on each date of sale a “consumption table”, along the format of a template as proposed by the SRPA, to show clearly which residential properties are offered for sale at the beginning of that date of sale. The vendors are advised to update the “consumption table” at appropriate time during the day to show which residential properties have been selected and which residential properties are still available for selection during that time point. The SRPA will issue the practice note shortly. The “consumption table” displayed by the vendors at the sales offices will also facilitate the frontline estate agents in the sales offices to get hold of the sales situation on that day.

(iii) Vendors offer to sell by batches the first-hand residential properties the prices of which have been set out in price list(s)

36. The Ordinance does not make it a mandatory requirement that a vendor must offer to sell all of the first-hand residential properties the prices of which are set out in the price list(s) as soon as possible after the vendor has made available the price list(s). This is not a loophole of the Ordinance but a practical situation which we have to face.

37. Before the implementation of the Ordinance, vendors could make available the price of only one residential property at any time, regardless of the total number of residential properties in that development/phase. Also, vendors could revise the prices of any of the residential properties at any time and the revised prices would take immediate effect.

38. To address this situation, the Ordinance requires that each price list of a development/phase must set out the price of not less than a specified number of residential properties. The legal system in Hong Kong gives individuals their right to dispose of their properties (including real properties) lawfully. The Government cannot force vendors to offer to sell all or not less than a prescribed number of residential properties on or before a specific date, and cannot prohibit vendors from adjusting the prices of the properties.

39. Under the Ordinance, when vendors offer to sell any of the first-hand residential properties the prices of which have been set out in the price list(s), they must make available a document containing the sales arrangements stating the date and time when, and the place where, the residential properties will be offered to be sold. The Ordinance also stipulates that if the price of a residential property has been set out in a price list, any change to that price must be reflected in the price list by a revision to the price list. The SRPA also requires that vendors should not delete any previous price(s) of a residential property from the price list, but should cross out the previous prices on the price list and state the revised price.

40. The above requirements of the Ordinance make it necessary for the vendors to set out the prices of not less than a prescribed number of residential properties as set out in the Ordinance in one go, regardless of the number of residential properties to be offered for sale in each round of sale (even if only one residential property is to be offered for sale). In this way, prospective purchasers could have an idea of the vendor's "intended prices" of a considerable number of the residential properties of that development/phase. Although vendors may make subsequent revisions to the prices, all the changes between the first price and the latest price of a residential property are clearly set out in the same price list. This helps prospective purchasers trace the price fluctuation of that residential property. The information is useful for prospective purchasers to read the vendors' assessment about the sales prospect of the residential properties.

41. If the vendors are required to offer to sell all of the first-hand residential properties the prices of which are set out in the price list(s) in one go, we may have to move backward to the previous situation of not prescribing the minimum number of residential properties the prices of which are to be set out in a price list. In other words, the previous situation which the public has denounced, namely that the vendors could set out the price of only one residential property in any round of sale,

would appear again. This may not be a situation which prospective purchasers wish to see and accept.

Looking ahead

42. The SRPA expects more new challenges ahead, given that more and more first-hand residential properties will be offered for sale. The SRPA will step up its efforts to conduct compliance checks and inspections, handle complaints, carry out investigations, 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 protection, and providing a level playing field for vendors of first-hand residential properties.

Sales of First-hand Residential Properties Authority
Transport and Housing Bureau
April 2015