

CAUTION!

High Commission Rebates for First-hand Residential Properties Attractive but Risky

Some developers seek to boost the sale of their first-hand residential properties (FRPs) by providing high commissions to estate agents, who may in turn provide commission rebates to attract purchasers. Prospective purchasers should learn more about how the rebates may affect the bank mortgages and the stamp duty payable, and make reference to the recent transaction prices and latest bank valuations of comparable properties. They should also conduct risk assessments and be prepared in case promises of rebates do not materialise in the end.



Can I get a bigger mortgage loan?

The residential mortgage loan that a purchaser gets from a bank could be less than expected if its approval is based on the property price after deduction of the rebates (i.e. discounted price) when it involves rebates by the estate agent of the commission from the developer. For instance, if a purchaser receives a rebate of \$300,000 for buying a \$10 million flat through an estate agent upon completion of the transaction, the amount of bank mortgage loan will be calculated on the basis of the discounted price (i.e. \$9.7 million) or the valuation of the property, whichever is the lower, provided that the purchaser has not received any other rebate. Assuming that the bank grants a 70% mortgage, the purchaser may only be able to borrow up to \$6.79 million instead of \$7 million as expected. The purchaser will have to pay another \$210,000 for the down payment.



Is the flat price reasonable?

Prospective purchasers can look up recent transaction prices and latest bank valuations of comparable residential properties in the vicinity for comparison. Besides, vendors may offer different discounts, gifts and financial advantages or benefits for different residential properties. Pay attention to such offers and study carefully the terms of payment set out in the price lists.



Is the rebate guaranteed?

There is no stipulation in the Estate Agents Ordinance and its subsidiary legislations on whether estate agents can offer incentives or rebate part of the commission paid by vendors to purchasers when participating in the sale of FRPs. Whether or not an estate agency company will offer incentives or rebates to purchasers of FRPs is purely its commercial decision. According to the Practice Circular issued by the Estate Agents Authority (EAA), during the sale of FRPs, estate agents must set out in writing any promise of incentives, including any gifts, discounts or rebates, that they have offered to prospective purchasers, and stipulate clearly the terms and format of the incentives so offered. Verbal promises alone will not suffice. Nevertheless, there were complaint cases in the past where some purchasers have indicated that their estate agents have failed to provide the rebates as promised after completion of the sale and purchase and they have incurred losses as a result. With respect to those estate agents who are found to have breached the guidelines in the Practice Circular, the EAA will take disciplinary action against them. For recovery of losses suffered by purchasers, they will have to take legal action on their own.



Does the rebate translate into higher stamp duty?

The current "ad valorem stamp duty" is by law charged at the applicable rate on the amount of consideration stated in the agreement for sale and purchase or the market value of the property (whichever is the higher), not the price of the property after deduction of the rebates. Purchasers should carefully consider and calculate the relevant stamp duty payable to avoid going over budget. Check with the Inland Revenue Department about your case if necessary.



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