

Transparent and Fair Transactions Safeguard Home Buyers' Rights

Residential Properties (First-hand Sales) Ordinance

The Sales of First-hand Residential Properties Authority

The Sales of First-hand Residential Properties Authority (“the SRPA”), set up under the Transport and Housing Bureau, commenced operation on 29 April 2013 to implement the Residential Properties (First-hand Sales) Ordinance (“the Ordinance”) (Cap. 621). The SRPA’s major functions include -

- administering and supervising compliance with the provisions of the Ordinance;
- issuing guidelines for stakeholders;
- handling complaints and public enquiries;
- conducting investigations on cases of suspected contravention of the Ordinance;
- educating the public on matters relating to the provisions of the Ordinance; and
- establishing and maintaining 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.

The Residential Properties (First-hand Sales) Ordinance

The Ordinance came into effect on 29 April 2013. The objective of the Ordinance is to further enhance the transparency, fairness and consumer protection of the sales arrangements and transactions of first-hand (uncompleted and completed) residential properties.

The Ordinance sets out detailed requirements for vendors of first-hand residential properties to comply with. These requirements are in relation to sales brochures, price lists, sales arrangements, register of transactions, show flats, viewing of completed residential properties, advertisements, and the mandatory provisions for the preliminary agreement for sale and purchase (“PASP”) and agreement for

sale and purchase (“ASP”) for the sales of first-hand residential properties. It also provides for prohibitions against misrepresentation and the dissemination of false or misleading information. Contraventions of the relevant provisions in the Ordinance are criminal offences. Maximum penalties for offences under the Ordinance are a fine at \$5,000,000 and an imprisonment up to 7 years.

Sales Documents

Sales Brochures

- Vendors must prepare and make available the sales brochure for collection by the public free of charge during a period of at least **seven days** immediately before the commencement of sale and on every day of sale. Concurrently, vendors should also make available the sales brochure on its own designated website. Sales brochure should be updated once every three months.
- The sales brochure should set out information on any matter that is likely to materially affect the enjoyment of the residential property or the development.

Price Lists

- Vendors must prepare and make available the price list for collection by the public free of charge during a period of at least **three days** immediately before the commencement of sale and on every day of sale. Concurrently, vendors should also make available the price list on its own designated website.
- Each price list should set out the prices of the minimum number of residential properties as required by the Ordinance. Terms of payment, discounts on the price, any gift, or any financial advantage or benefit to be made available in connection with the purchase of the residential properties should also be set out in a price list.
- If a vendor wishes to make changes to the price of a residential property which has already been set out in a price list, the price must be revised on that relevant price list. The residential property concerned should only be sold at the revised price three days after the issue of the revised price list.
- Reservation of specific residential property is prohibited before the first date of sale of that particular residential property.

Sales Arrangements

- Vendors should make available for collection, and on its own designated website for inspection, by the public at least **three days** immediately before the commencement of sale the following information on sales arrangements
 -
 - the date, time and the place for the sales of the residential properties;
 - which residential properties will be offered to be sold; and
 - the method to be used to determine the order of priority among prospective purchasers for the selection of residential properties.

Registers of Transactions

- On each day of sale, the vendor must keep a register of transactions of the development at the sales office and on the vendor's own designated website.
- The register of transactions should include the dates on which the PASP and the ASP were signed, the transacted price, the date on which the PASP or the ASP was terminated (if applicable), the terms of payment and whether a transaction involves a related party to the vendor.
- The vendor should disclose in the register of transactions information on a PASP within 24 hours after the PASP is signed, and disclose information on an ASP within 1 working day after the ASP is signed.

Show Flats and Viewing of Property in Completed Development

Show Flats for Uncompleted Developments

- The provision of show flats by vendors is not mandatory. But if show flats are provided, the show flats should be constructed according to the requirements in the Ordinance.
- Vendors can provide a "modified show flat" only if an "unmodified show flat" is provided for the same property.
- Vendors should neither restrict the visitors to show flats from taking measurements, photographs and videos of "unmodified show flats" nor restrict them from taking measurements of "modified show flats".
- Sales brochures must have been made available to the public by the vendors when the show flats are made available for viewing.

Viewing of Property in Completed Developments

- Before the signing of the PASP, a vendor should arrange the purchaser to view the particular property that he/she wishes to purchase. If it is not reasonably practicable to arrange viewing of that particular property, the vendor should arrange the purchaser to view a comparable property. If it is

not reasonably practicable to arrange the viewing of a comparable property, the vendor should obtain an agreement in writing from the purchaser that the vendor is not required to make such a comparable property available for viewing.

- Vendors cannot take the provision of “show flats” as a substitute of the requirement of making available completed properties for viewing by purchasers.

Preliminary Agreements and Agreements for Sale and Purchase

Provisions in Agreements

- Mandatory provisions as required by the Ordinance must be incorporated into the PASP and the ASP. These provisions set out clearly the rights and obligations of vendors and purchasers. If there is inconsistency between the mandatory provisions and other provisions in an agreement, the mandatory provisions shall prevail over any non-mandatory ones.

Forfeiture of Preliminary Deposit

- If a purchaser does not proceed to sign an ASP within 5 working days after the signing of a PASP :
 - the PASP is terminated;
 - the preliminary deposit, which amounts to 5% of the purchase price, will be forfeited; and
 - the vendor does not have any further claim against the purchaser.

Others

Saleable Area Only

- Under the Ordinance, saleable area will be the only basis that can be used to quote property size and property price per square foot/per square metre in the sales brochures, price lists and advertisements of first-hand residential properties.
- “Saleable area”, as defined in the Ordinance, means the floor area of the residential property including the floor area of a balcony, a utility platform and a verandah, but excluding the area of an air-conditioning plant room, a bay window, a cockloft, a flat roof, a garden, a parking space, a roof, a stairhood, a terrace and a yard.

Advertisements

- If an advertisement is published by the vendor or by another person with the consent of the vendor, the advertisement must state that fact.
- Advertisements must not contain false or misleading information.
- Printed advertisements showing artist impressions of the development or its surrounding area must carry a statement reminding prospective purchasers to make reference to the sales brochures and to conduct on-site visits.

Misrepresentation and Dissemination of False or Misleading Information

- A person who makes a fraudulent misrepresentation or a reckless misrepresentation for the purpose of inducing another person to purchase first-hand residential properties commits an offence under the Ordinance.
- A person who disseminates or authorises the dissemination of information that is likely to induce another person to purchase first-hand residential properties and if he/she knows that, or is reckless as to whether, the information is false or misleading as to a material fact, commits an offence.

Sales of First-hand Residential Properties Electronic Platform (www.srpe.gov.hk)

The public may view the sales brochures, price lists and registers of transactions of first-hand residential properties that are subject to the regulation of the Ordinance from the Sales of First-hand Residential Properties Electronic Platform.

** This pamphlet is for general reference only. Please refer to the Ordinance for details.*

Sales of First-hand Residential Properties Authority

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