

Legislative Council Panel on Housing

Sale of First-hand Residential Properties in Completed Development or Phase

This paper informs Members of the requirements of the Residential Properties (First-hand Sales) Ordinance (Cap. 621) (the Ordinance) that vendors should make available a first-hand residential property in a completed development or phase for viewing by a prospective purchaser before selling the property to that person. Also, this paper informs Members of the monitoring work of the Sales of First-hand Residential Properties Authority (SRPA) in relation to the relevant sections of the Ordinance, and the follow-up action on a recent case.

REQUIREMENTS UNDER THE ORDINANCE

2. Under the Ordinance, when a vendor offers to sell or sells any first-hand residential property in a completed development or phase, the vendor must comply with two requirements which apply specifically to a completed development or phase, in addition to complying with the requirements under the Ordinance on sales brochure, price list, sales arrangements, register of transactions, Preliminary Agreement for Sale and Purchase (PASP) and Agreement for Sales and Purchase, and advertisement. One of the two requirements aforementioned is to make the residential properties available for viewing by the prospective purchasers¹.

3. According to section 44(1) of the Ordinance, before a completed first-hand residential property is sold to a person, the vendor must make the residential property available for viewing by the person. According to section 44(2) of the Ordinance, if it is not reasonably practicable for the residential property to be viewed by the person, the vendor must make a comparable residential property in the same development or phase available for viewing by the person. If it is not reasonably practicable for any such comparable residential property to be viewed by the person, and the person agrees in writing that the vendor is not required to make such a comparable residential property

¹ Another requirement is that the vendor must provide prospective purchasers with a “vendor’s information form” of the residential property which is printed within the previous three months, as stipulated in section 68 of the Ordinance.

available for viewing by the person, the vendor then does not have to do so. If section 44(1) of the Ordinance is contravened, the vendor of that residential property commits an offence and is liable to a fine of \$500,000. An extract of section 44 of the Ordinance is at **Annex 1**.

4. According to section 4(1)(a)(ii) of the Ordinance, a completed development (other than a specified New Territories development) means a development which an occupation permit (OP) has been issued in respect of every building in the development. According to section 4(1)(c) of the Ordinance, a phase of a development is a completed phase of the development if an OP has been issued in respect of every building in the phase. An extract of section 4(1) of the Ordinance is at **Annex 2**.

MONITORING WORK OF THE SRPA

5. To ascertain whether a vendor has complied with the requirements under section 44(1) and (2) of the Ordinance when offering to sell or selling first-hand residential properties in a completed development or phase, the SRPA examines the document(s) containing the sales arrangements of each and every completed development or phase which the Ordinance applies, and conducts on-site inspection(s) at the development or phase. Also, the SRPA examines the sales brochure(s), the vendor's information form(s), the price list(s), the register of transactions, the website designated by the vendor and the advertisement(s) purporting to promote the sale of the residential properties for a completed development or phase, in order to ascertain that the vendor has complied with the other requirements of the Ordinance when offering to sell or selling residential properties in a completed development or phase.

A RECENT CASE

6. On 17 July 2014, the SRPA examined the document containing the sales arrangements of 260 first-hand residential properties (date of issue: 17 July 2014) in Phase I of a development at Fung Yuen Road, Tai Po (the Phase) which was made available by the Vendor of the Phase for collection by the general public free of charge. That was the first day the vendor made available the aforementioned document. The Vendor has also started making available the aforementioned document for inspection by the general public on the website designated by the Vendor since that day.

7. An occupation permit was issued to the Phase on 10 March 2014. The Phase is a completed phase of the development.

8. The SRPA observed it was stipulated in the aforementioned document that the Vendor required all of the registrants who intended to purchase the 260 first-hand residential properties and who would have submitted the Registration of Intent to submit to the Vendor the duly signed "No Viewing Agreement" on the first day of sale of the aforementioned first-hand residential properties (i.e. 26 July 2014) in order to be eligible for the balloting.

9. The SRPA considered the aforementioned arrangements a serious departure from the spirit of the Ordinance, which requires that vendors must make the completed first-hand residential property which a person intends to purchase available for viewing by that person before the vendor sells the residential property to that person. Also, the SRPA considered the aforementioned arrangements seriously harming the interest of prospective purchasers.

Follow up action of the SRPA

(I) Advice to prospective purchasers

10. Under Section 87(c) of the Ordinance, one of the functions of the SRPA is to educate the public on any matter relating to the provisions of the Ordinance.

11. According to the aforementioned document, the Vendor would accept the Registration of Intent from registrants starting from 18 July 2014 (i.e. the following day after the Vendor issued the aforementioned document). The SRPA considered it imperative to draw the attention of prospective purchasers before the Vendor accepted the Registration of Intent from registrants that the Phase was a completed phase of the development, prospective purchasers had the right to, and should, view the residential properties which they intended to purchase or the comparable residential properties before entering into the PASP, and prospective purchasers should not easily give up their right to view the residential properties they intend to purchase in order to protect their interest. The SRPA issued a press release to remind prospective purchasers of the matter on 17 July 2014 (i.e. the same day when the Vendor issued the aforementioned document).

(II) *Investigation of the matters which are suspected to be contravening the Ordinance*

12. Under Section 87(a) of the Ordinance, one of the functions of the SRPA is to administer the provision of the Ordinance.

13. With a view to considering whether the Vendor had contravened section 44(1) of the Ordinance, the SRPA issued a letter to the vendor on 17 July 2014, requesting the Vendor to explain to the SRPA why it considered not reasonably practicable to make available the 260 residential properties for viewing by prospective purchasers, and the reasons why it considered not reasonably practicable to make available any of the other completed residential properties in the Phase as comparable residential properties for viewing by prospective purchasers.

14. The SRPA received the written reply from the Vendor on 18 July 2014. The SRPA issued another letter to the Vendor on 22 July 2014, requesting the Vendor to provide further information, primarily on whether the Vendor had thoroughly considered all reasonably practicable means to make available the residential properties for viewing with a view to complying with section 44(1) of the Ordinance, and whether the difficulties encountered by the Vendor when adopting any of those means were insurmountable. The SRPA received the written reply from the Vendor on 29 July 2014.

15. The SRPA is considering the justifications as set out by the Vendor in the two written replies aforementioned, and will decide the next step.

Other relevant information

16. The Vendor made available to the public five other documents containing the sales arrangements on 22 July 2014, 26 July 2014, 27 July 2014 and 29 July 2014, offering to sell a total of 738 first-hand residential properties in the Phase (including the aforementioned 260 first-hand residential properties). The Vendor required in those five documents that all the registrants who intended to purchase the 738 first-hand residential properties had to submit to the Vendor the duly signed “No Viewing Agreement” on the first date of sale of those first-hand residential properties, in order to be eligible for the balloting.

SITUATIONS OF OTHER COMPLETED DEVELOPMENTS /PHASES

17. There were media reports that vendors of other developments or phases had requested prospective purchasers to sign a document similar to the “No Viewing Agreement” of the Phase I of the development at Fung Yuen Road, Tai Po before signing the PASP. The SRPA understands that vendors of other completed developments or phases have made available the residential properties which prospective purchasers intend to purchase or comparable residential properties for viewing by prospective purchasers. Those vendors then requested each prospective purchaser to sign a document before signing the PASP to certify that he/she had viewed the residential properties he/she intended to purchase or the comparable residential properties in the development or phase, or to sign a document to certify that he/she had given up viewing the residential properties he/she intended to purchase or the comparable residential properties in the development or phase.

**Sales of First-hand Residential Properties Authority
Transport and Housing Bureau
August 2014**

**Section 44
of the Residential Properties (First-hand Sales) Ordinance**

**Division 5 - Viewing of Property in Completed Development or Phase
Section 44 - Viewing before sale**

- (1) Before the specified residential property is sold to a person, the vendor must make the residential property available for viewing by the person.
- (2) Subsection (1) does not require the vendor to make the specified residential property available for viewing by the person—
 - (a) if it is not reasonably practicable for the specified residential property to be viewed by the person; and
 - (b) if—
 - (i) the vendor has made a comparable residential property in the completed development (in the case of section 14(3)(a)) or completed phase (in the case of section 14(3)(b)) available for viewing by the person; or
 - (ii) it is not reasonably practicable for any such comparable residential property to be viewed by the person, and the person agrees in writing that the vendor is not required to make such a comparable residential property available for viewing by the person before the specified residential property is sold to the person.
- (3) If subsection (1) is contravened, the vendor of the specified residential property commits an offence and is liable to a fine of \$500,000.

**Section 4(1)
of the Residential Properties (First-hand Sales) Ordinance**

Part 1 - Preliminary

Section 4 - Interpretation: completed, uncompleted development and phase etc.

(1) In this Ordinance—

(a) a development is a completed development if—

(i) in the case of a specified New Territories development—

(A) a no-objection letter has been issued by the Director of Lands in respect of every building in the development; or

(B) a certificate of compliance or consent to assign has been issued by the Director of Lands in respect of the development; or

(ii) in any other case, an occupation permit has been issued in respect of every building in the development;

(b) a development is an uncompleted development if it is not a completed development;

(c) a phase of a development is a completed phase of the development if an occupation permit has been issued in respect of every building in the phase; and

(d) a phase of a development is an uncompleted phase of the development if it is not a completed phase of the development.