

LCQ15: Relief measures regarding uncompleted residential developments

Following is a question by the Hon Louis Lonng and a written reply by the Secretary for Development, Mr Michael Wong, in the Legislative Council today (April 6):

Some members of the real estate and construction sectors have relayed that recently, the severe outbreak of the Coronavirus Disease 2019 (COVID-19) epidemic has caused the suspension of various government services, hence a significant delay in the processes for securing statutory approvals (e.g. approvals for general building plans from the Buildings Department and the Lands Department) and various approvals under lease for developments. Furthermore, as construction sites have to be closed upon discovery of confirmed COVID-19 cases to prevent the spread of the epidemic, the overall progress of the construction works of uncompleted residential developments has been significantly delayed, causing serious difficulties for their timely completion. In this connection, will the Government inform this Council:

(1) whether it will consider offering a new round of free extension of the Building Covenant (BC) period similar to the relief measure it introduced in April 2020; if so, of the time span of such free extension;

(2) whether it will consider amending the standard form of Agreement for Sale and Purchase (ASP) under the Lands Department Consent Scheme (the Scheme) for sale of residential units in uncompleted developments to expressly include the outbreak of a pandemic/epidemic as one of the reasons that the Authorized Person (AP) for a development may grant an extension of the material date for completion of the development; if so, whether the Government will consider taking steps, such as issuance of a practice note or circular letter, to provide clear guidance on the same to APs of those developments in respect of which uncompleted units have already been sold under the Scheme but have encountered difficulties in timely completion due to the COVID-19 epidemic; and

(3) whether it will, in the imminent future, implement other relief measures to help the sectors to minimise the risks involved in not being able to comply with the BC period or the material date as specified in the ASP under the Scheme due to the severe outbreak of the COVID-19 epidemic?

Reply:

President,

The various processes for taking forward development projects are closely intertwined. From project design, manpower deployment, supply of materials to construction process, hiccups in any of these aspects could affect the project progress. The Government understands the impact of the fifth wave of the Coronavirus Disease 2019 (COVID-19) on the development and

construction sectors. The Development Bureau (DEVB) and the relevant departments have been closely monitoring the situation, and appropriately adjusted the relevant policy measures and arrangements with regard to the changing epidemic situation in order to support the industry.

During the epidemic, the relevant departments responsible for processing development projects under the DEVB have maintained their operation and continued to provide approval services. Taking account of the implementation of the special work arrangement and the provision of basic and limited-scale public services, the relevant departments have streamlined the approval processes as far as possible, and, through better use of technology, facilitated operation of the industry without prejudicing the relevant technical requirements and statutory procedures.

Our reply to the three-part question is as follows:

(1) Land leases generally contain a building covenant (BC) clause, under which the lessee is required to complete and obtain occupation permit from the Building Authority for the development project specified under the lease within the BC period.

According to the established mechanism, if a lessee is unable to complete the development project within the BC period, he is required to apply to the Lands Department (LandsD) for an extension of the BC period and pay land premium in accordance with the mechanism.

In view of the impact caused by the fifth wave of the epidemic on the industry, the DEVB announced on March 14 that for all leases with unfulfilled BC as at that day, the original expiry date of the BC period may be extended at nil premium by up to six months. This measure aims to provide upfront certainty to various professions in the industry, so as to minimise unease and pressure that may be generated by the existing BC periods. To streamline the procedures, the LandsD will take the initiative to approach and follow up with the relevant lessees. No application is required from the lessees. Details are set out in the Practice Note No. 2/2022 promulgated by the LandsD.

At the same time, the DEVB looks to the lessees granted with such extension to handle the deadlines in their contracts with other contractual parties in a reasonable manner. In respect of works projects not subject to the restriction of BC period under the land lease (such as redevelopment projects which do not require lease modification), the DEVB also appeals to the industry to handle the relevant contractual time limits by exercising flexibility in a sympathetic spirit. As the community has a keen demand for land and housing, the Government looks forward to working hand in hand with the sector to make the best endeavours to catch up on the progress and strive for earliest completion of the projects as soon as the epidemic stabilises.

(2) The second part of the question concerns matters relating to the Lands Department Consent Scheme (the Consent Scheme) which falls under the policy purview of the Transport and Housing Bureau (THB). We have therefore consulted the THB for this part of reply. According to the THB, the Consent

Scheme aims to expedite the supply of residential flats in the market by allowing pre-sale of uncompleted flats by developers upon consent from the Government, and at the same time protect the interests of flat purchasers. Under the Consent Scheme, developers have to demonstrate financial ability to complete their developments, and all transactions must adopt the standard form of agreement for sale and purchase (ASP) which sets out the rights and obligations of the developer and the flat purchaser. Such ASPs entered for the sale of uncompleted flats must be registered in the Land Registry within one calendar month from the date of the ASPs. The ASPs also include provisions requiring purchasers' monies to be put in the stakeholder account maintained and managed by the solicitor of the developer, and such monies would be released for meeting the construction cost and professional fees of the development as certified by the Authorized Person (AP). These arrangements are able to protect the interests of flat purchasers.

The standard form of ASP under the Consent Scheme specifies that the AP of the development may extend the estimated material date having regard to factors such as inclement weather, strike or force majeure. Accordingly, if the AP is satisfied that the impact of the COVID-19 epidemic qualifies as such factors, he or she may also extend the estimated material date of the development. The length of such extension should be determined with regard to the circumstances of individual developments, and consideration has to be given to whether the delay in the development progress is indeed not caused by other factors. In this light, the THB considers it not necessary to revise the standard form of ASP or issue further guidance on grant of extension to estimated material date for developments.

(3) As mentioned above, the DEVB and the relevant departments have been responding having regard to circumstances. We will continue to maintain communication with the industry, and review the arrangements in relation to development and works as and when needed.