

LCQ17: First-hand residential units offered for sale by way of tender

Following is a question by the Hon Jeremy Tam and a written reply by the Secretary for Transport and Housing, Mr Frank Chan Fan, in the Legislative Council today (May 22):

Question:

On June 29 last year, the Government announced amendments to the Consent Scheme for the pre-sale of uncompleted flats, requiring developers to offer for sale, at each turn of sale, no less than 20 per cent of the total number of residential units subject to the relevant pre-sale consent, regardless of the sales method (including public sale, tender and auction) used. However, it has been reported that developers can achieve offering for sale less than 20 per cent of the units and yet satisfying the aforesaid requirement, just by announcing that certain pre-sale flats, which they have no intention to sell, are offered for sale by way of tender (and they can simply announce after the completion of the sales activities that the units offered for sale by way of tender have not been sold as the bids of prospective buyers were lower than the reserve prices). On the other hand, the Real Estate Developers Association of Hong Kong (REDA) announced on April 4 this year the introduction of three measures, including that the first sale of units in non-luxury residential developments will be conducted by way of public sale. There are views that the relevant price lists and registers of transactions can increase the transparency of the selling prices of units and provide reference for prospective buyers participating in future biddings for the units in the developments concerned. In this connection, will the Government inform this Council:

(1) whether it has studied if the developers' adoption of the aforesaid practice in coping with the requirement on the ratio of units offered for sale runs contrary to the policy intent of the requirement and indicates that there are loopholes in the requirement;

(2) as developers have reached a consensus on the three measures introduced by REDA although they are merely self-regulatory in nature, whether the Government will consider codifying such measures to ensure that developers will not contravene the requirements concerned; if so, of the details; if not, the reasons for that;

(3) while the measures introduced by REDA have increased the transparency of the prices of the units offered for sale by way of tender, prospective buyers participating in the biddings are still subject to unfavourable conditions (e.g. their bids must be higher than the developer's reserve prices as well as other bids in order for them to successfully purchase the units), whether the Government has measures in place to protect the rights and interests of such prospective buyers; if so, of the details; if not, the reasons for that;

and

(4) as the Government indicated in reply to a question raised by a Member of this Council on March 27 this year that, at the current stage, it had no intention to stipulate under the Consent Scheme the number or ratio of units to be offered, or the number of times for which the units might be offered, for sale by way of tender by the developers, of the justifications for this stance?

Reply:

President,

The consolidated reply to various part of the question raised by Hon Jeremy Tam is as follows:

The Government has all along been closely monitoring the movement of the private residential property market, and will introduce appropriate measures as and when necessary to ensure the healthy development of the property market. With a view to encouraging more timely supply of first-hand private residential units and improving sales practices, the Chief Executive announced the amendment of the Consent Scheme on June 29, 2018. Developers are required to offer for sale no less than 20 per cent of the total number of residential units subject to the relevant pre-sale consent at each turn of sale. If the remaining unsold residential units are less than 20 per cent, the developer has to offer for sale all remaining units in one go. Having considered the varying circumstances of different developments, the Consent Scheme does not specify what sales method should be adopted by the developers. Regardless of the sale methods, developers have to follow the above requirement.

The Chief Executive announced on the same day another measure, that is the proposal to amend the Rating Ordinance for the introduction of "Special Rates" on vacant first-hand private residential units. "Special Rates" will be collected by the Rating and Valuation Department annually at two times (i.e. 200 per cent) the rateable value of the units concerned. The Government has consulted the stakeholders and the Housing Panel of the Legislative Council (LegCo) on the proposed legislative amendments, and is now preparing the Rating (Amendment) Bill for introduction into LegCo as soon as practicable. The above two measures complement one another and help achieve the policy objective of encouraging more timely supply of first-hand residential units.

On regulation of the sales of first-hand residential properties, the Government has been taking a three-pronged approach by seriously enforcing the relevant Ordinance, continuously improving the trade's compliance with the Ordinance and fostering public awareness with a view to ensuring consumer protection in the purchase of first-hand residential properties.

According to section 67 of the Residential Properties (First-hand Sales) Ordinance (the Ordinance), provisions in Division 3 of Part 2 of the

Ordinance on price list do not apply if a developer offers a first-hand residential property to be sold by way of tender, but other provisions of the Ordinance still apply, such as the requirements of making available sales brochure, documents containing sales arrangements and the Register of Transactions.

In respect of law enforcement, the Government has earlier pointed out that there were some individual first-hand residential properties offered to be sold by way of tender where the sales process was undesirable and not transparent enough. In this connection, the Sales of First-hand Residential Properties Authority (SRPA) has proactively monitored the sales process of developments on the market and has spotted cases with insufficient transparency in the sales process and the transaction information, which might have contravened the Ordinance. The SRPA has been investigating the cases and would strictly enforce the Ordinance based on evidence. The SRPA does not rule out the possibility of taking prosecution action. Meanwhile, the Estate Agents Authority (EAA) is looking into cases to ensure that estate agents are strictly observing the Estate Agents Ordinance and EAA's guidelines when participating in the sales of residential properties by tender.

In respect of a case of insufficient transparency in the transaction information, the SRPA has initiated prosecution action against the relevant vendor. The case will be heard on July 9, 2019.

On enhancing the trade's compliance with the Ordinance, section 61 of the Ordinance states that the purpose of Register of Transactions of a development is to provide a member of the public with the transaction information relating to the development for understanding the market conditions. Prospective purchasers can thus get accurate market information and make an informed decision when purchasing first-hand residential properties. The SRPA has issued a Reminder to the Trade and a Frequently Asked Question and Answer requiring vendors to set out full details of the terms of payment in the Registers of Transactions of first-hand residential developments, and has reminded vendors that in the sales of first-hand residential properties, if they have offered any discount, gift, financial advantage or benefit (no matter in terms of cash or not) to the purchasers, they should set out the full details of the terms of payment as agreed between the vendor and the purchaser for the purchase of each specified residential property. Moreover, the Register of Transactions should be self-contained so that prospective purchasers do not have to refer to other documents or materials for details of the terms of payment.

Meanwhile, the EAA has also issued a Letter to Licensees to remind all licensees participating in the sales of first-hand residential properties to comply with the Estate Agents Ordinance and the relevant guidelines set out in the Practice Circular issued by the EAA, regardless of the method of sales adopted by developers for selling their properties. In particular, the EAA reminds licensees that without obtaining a vendor's written endorsement, they must not issue any materials promoting the sales of any first-hand residential properties by tender, including the materials containing

information on the suggested bidding price.

On promoting public awareness of the Ordinance, the SRPA launched a new radio Announcement in the Public Interest on May 17, 2019, named "Bidding First-hand Residential Properties", to remind prospective purchasers the points to note before bidding first-hand residential properties.

The Government will continue to monitor closely the effectiveness of the above measures and the sales of first-hand residential properties by tender. It will take any possible measures when necessary to ensure the level of transparency of the sales of first-hand residential properties by tender is the same as that for open sales with price lists.