

LCQ7: Protection for property purchases outside Hong Kong

Following is a question by Dr the Hon Hoey Simon Lee and a written reply by the Secretary for Housing, Ms Winnie Ho, in the Legislative Council today (November 1):

Question:

It has been reported that, from time to time in recent years, some members of the public have suffered losses when investing in properties outside Hong Kong (POH). On the other hand, the "Purchase of Properties Outside Hong Kong – A Study on Enhancing Consumer Protection", published by the Consumer Council in 2021, has pointed out the inadequacy of consumer protection for the purchase of POH under the current regulatory framework in Hong Kong and made a number of improvement recommendations. In this connection, will the Government inform this Council:

- (1) of the government departments from which members of the public may currently seek assistance in the event of a dispute over the purchase of POH; the legislation under which these departments regulate the matter and how they follow up on such cases;
- (2) how it will step up public education so that investors and members of the public can understand the risks involved and the matters requiring attention when purchasing POH (particularly uncompleted properties); and
- (3) whether it will undertake public consultation and legislative work on the improvement recommendations made in the aforesaid report; if so, of the details; if not, the reasons for that?

Reply:

President,

Having consulted the Commerce and Economic Development Bureau, the Constitutional and Mainland Affairs Bureau (CMAB), the Financial Services and the Treasury Bureau, the Security Bureau, the Estate Agents Authority (EAA) and the Consumer Council, the consolidated reply to various parts of the question raised by Dr the Hon Hoey Simon Lee is set out below:

- (1) According to the Estate Agents (Exemption from Licensing) Order (Cap. 511B), a person shall be exempted from the requirement for obtaining an estate agent's licence if he/she handles exclusively properties outside Hong Kong (POH); and states in all his/her documents (including pamphlets and brochures, etc.) and advertisement that he/she is not licensed to deal with any property situated in Hong Kong. However, if the company or individual concerned also performs estate agency work for properties within Hong Kong,

that company/individual is required to obtain a licence issued by the EAA. The EAA had issued a practice circular in December 2017 to provide guidelines to estate agent licensees on the practices and measures to be adopted in handling the sale of uncompleted properties situated outside Hong Kong (UPOH). These practices and measures include, amongst others, due diligence measures and requirement on providing important sales documents. The guidelines have taken effect since April 1, 2018. If a licensed estate agent/salesperson is suspected of breaching the Code of Ethics and the practice circular issued by the EAA in the course of the sale of POH, the public can make complaints to the EAA and the EAA will investigate into the matter. Moreover, practicing estate agency work without a licence or employing unlicensed person to practice estate agency work is a criminal offence. The EAA will refer cases found to the Police for follow-up.

Furthermore, the Police, the Customs and Excise Department (C&ED) and the Securities and Futures Commission (SFC) have all along been conducting investigations and taking enforcement on complaints or cases involving POH under their respective purview as well. The Police handles requests for assistance involving non-local property investment deception, investigates into whether there have been any breaches of common law or other related offenses under the Crimes Ordinance (Cap. 200) and the Theft Ordinance (Cap. 210); the C&ED handles cases with possible offence under the Trade Descriptions Ordinance (Cap. 362); and the SFC handles complaints which involve collective investment schemes with non-local real estates in accordance with the Securities and Futures Ordinance (Cap. 571).

Separately, one of the main functions of the five Mainland Offices of the HKSAR Government (namely the Beijing Office and the Hong Kong Economic and Trade Offices in Guangdong, Chengdu, Shanghai and Wuhan) is to provide assistance to Hong Kong residents in distress in the Mainland. If the Hong Kong residents seeking assistance would like to lodge complaints or appeals with the Mainland authorities regarding properties in the Mainland, the Mainland Offices will refer their cases to the relevant Mainland authorities as requested. Besides, the Hong Kong Economic and Trade Office in Guangdong has commissioned an organisation to provide free legal advisory service to Hong Kong residents in need through a telephone hotline or by arranging Mainland duty lawyers to meet the assistance seekers to provide preliminary advice on Mainland-related legal matters.

Apart from seeking help from or making complaints to the above departments/organisations, consumers may also consider making complaints to the Consumer Council if they encounter disputes regarding POH. The Consumer Council will act as a mediator to handle consumer complaints and assist consumers and traders in resolving disputes.

(2) Public education is of utmost importance in reducing the chance of consumers from suffering losses in purchasing POH. In this regard, the Housing Bureau has recently launched a set of Announcements in the Public Interest (API) on television (TV) and radio (youtu.be/BwA504n0N9U?si=6ueNX4IqbaLkDkYE) in July this year to promote the message of "Beware of the risks of buying properties outside Hong Kong" to consumers.

The EAA has also been reminding consumers through various media (including the consumer education thematic website: outsidehk.eaa.org.hk) to understand the relevant risks and the issues that they should pay attention to before deciding to purchase POH. The EAA has published a pamphlet entitled "Purchasing Non-local Properties Be SMART" and launched a TV and radio API entitled "Purchasing non-local properties can be risky, be smart and study the details carefully" and a consumer education video entitled "To buy or not to buy off-plan properties outside Hong Kong? Assess the risks before you buy!", as well as has been holding lectures from time to time to remind consumers of relevant risks. The EAA will continue to enhance public education efforts to raise consumer awareness, including further promotion of its slogan. In addition, the Consumer Council has from time to time reminded the public of the risks involved in the purchase of POH, for example, by setting out extracts of complaint cases in the "CHOICE" magazine issued by it and relevant tips on its website.

The CMAB and the five Mainland Offices have also strengthened public education through different channels with a view to enhancing the public's understanding of matters related to property purchase in the Mainland. The measures taken include publishing the "Practical Guide for Hong Kong Residents Living in the Mainland", a booklet on living in the Mainland covering practical information about property purchase; providing a link to the webpage of the EAA containing practical information on the purchase of POH on the CMAB's dedicated website on the Guangdong-Hong Kong-Macao Greater Bay Area, the websites and WeChat public platforms of the Mainland Offices, etc, and releasing the information on property purchase in the Mainland through these websites and public platforms; as well as publishing articles in the "CHOICE" magazine of the Consumer Council to remind citizens of the points to note when purchasing property in the Mainland.

(3) In the study report entitled "Purchase of Properties Outside Hong Kong – A Study on Enhancing Consumer Protection" published by the Consumer Council in 2021, the Consumer Council recommended, among others, the introduction of a cooling-off period for reservation fees (i.e. a fee charged for allowing the purchaser to enjoy exclusive opportunity to buy the favoured property) and the strengthening of the regulation of estate agents and salespersons who engage in the sale of first-hand residential properties outside Hong Kong, as well as the regulation of the provision of relevant information and the content of relevant advertisements.

In considering measures to enhance the protection of buyers of POH, it is vital to understand the roots and nature of the problems encountered by them. According to the EAA, most complaints in relation to POH were originated from the vendors/developers rather than the estate agents. For instance, the vendors/developers ultimately failed to complete the properties concerned as scheduled and failed to fulfill their commitments to pay guaranteed rental returns to buyers, or the property information provided to the estate agents is inaccurate.

As Hong Kong has no control over the property regulatory systems of other jurisdictions, regulating estate agents cannot solve the problems arising from vendors/developers, nor can it effectively reduce the risks

borne by Hong Kong buyers. Besides, vendors/developers of POH are free to conduct sales or promotion activities online, by post sent from abroad or through other means without hiring licensed estate agents. Therefore, it is difficult to provide consumers with effective protection by regulating licensed estate agents alone. On the contrary, if we only regulate estate agents who sell POH, consumers may mistakenly believe that they have been provided with comprehensive or sufficient protection and may lose guard in purchasing POH, which may lead to adverse results.

In addition, the above-mentioned EAA practice circular on the sale of UPOH has required estate agent licensees to take all reasonable steps to verify the accuracy of the information contained when preparing advertisements or promotional materials to promote UPOH, and ensure that important information is clearly stated in the advertisements or promotional materials he/she prepares or distributes. These include requiring the licensee to state whether there is a cooling-off period and the length of cooling-off period (if any) in the sales information of the UPOH for prospective buyers' reference. However, whether there is a cooling-off period and whether the reservation fee is refundable depend on the terms of sale set by developers, the negotiations between the buyer and the vendor, the regulations and systems of the jurisdictions concerned, etc. The EAA will review the relevant guidelines in a timely manner as necessary.

To fundamentally reduce the chance of consumers from losses in the purchase of POH, public education is of paramount importance. The Government, the EAA and the Consumer Council will continue to strengthen relevant work and remind consumers of the relevant risks and matters they should attend to before deciding to purchase POH.