

Case Summary

Complaint against the Hong Kong Housing Society and the Housing Department for maladministration in handling matters relating to the construction and sale of flats of a housing estate

The Complaint

The Hong Kong Housing Society (HKHS) sold some units of a housing estate through the Home Ownership Scheme (HOS) in late 1996. Since the end of 1997, this Office had received a number of complaints against the HKHS and the Housing Department (HD) for maladministration in handling matters relating to the construction and sale of flats of the housing estate. The main complaint points were -

- (a) the HKHS had failed to effectively monitor the work of the building consultant and, as a result, the walls were too thick and the floor area was reduced;
- (b) the HKHS had not verified the area of the units and the inaccurate information provided in the sales brochure had misled the buyers;
- (c) the HD had not informed the buyers beforehand that the housing estate was not an HOS development and they would not enjoy the reduced interest rate offered to HOS flat buyers; and
- (d) the HKHS had not offered reasonable compensation to the affected buyers.

Opinions and Conclusion

2. This Office notes that when the HKHS initiates a housing development, it will appoint an independent building consultant to take charge of the building design, act as the co-ordinator, monitor the main contractor's work progress and ensure the quality

of the building works. The HKHS' s Projects Division is responsible for monitoring the work of the building consultant, receiving regular progress reports and carrying out site inspections. Other divisions such as the Planning & Development Division and Estate Management Division will also assist to monitor the performance of the building consultant and main contractor by advising the project team on the building design and the standard of the building works.

3. Most buildings nowadays are high-rise buildings and the thickness of the walls varies with the height of the building. The walls of the units on lower floors are thicker so as to provide stronger support. In this case, the buildings in the housing estate are 50 stories high, so the stability of the building structure and structural walls is very important. As the stability of the structural walls depends on their thickness, the buildings must have thicker walls.

4. The HKHS staff will monitor the building works throughout the project period. During the hand-over inspection, the staff are required to follow the HKHS' s guidelines to see if the building works and fittings are up to the required standards. Due to practical considerations in the design of the walls, the internal area of the units on upper floors is relatively bigger than that of the units on lower floors. In fact, the sales brochure had stated that the structural walls of the units on upper floors were slightly thinner than those of the units on lower floors. Therefore, The Ombudsman concludes that there is no evidence to show that the HKHS had failed to monitor the work of the building consultant, resulting in the buildings having thick walls which reduced the floor area, i.e. complaint point (a) is unsubstantiated.

5. According to the sale and purchase agreement, "saleable area" is defined as the area measured from the exterior of the enclosing walls of the unit to the middle of the party walls between units. This definition accords with the provisions stipulated by the Government and adheres to the guidelines jointly drawn up by the Hong Kong Institute of Surveyors and the Consumer Council. These same guidelines are also adopted by property developers for flats put up for sale after obtaining the pre-sale consent. As "saleable area" differs from the "usable area" normally used for public housing developments, the saleable area listed in the sales brochure of the housing estate concerned is not equivalent to the usable area. However, the trade does not have a uniform standard on the ratio between saleable area and usable area, or the definition of usable area.

6. Apart from the building design and the supervision of the building works, the building consultant is also responsible for calculating the gross floor area and the saleable area of individual units. Such data has to be submitted to the relevant government departments for obtaining the pre-sale consent and published in the sales brochure for the buyers' reference. It is found that the building consultant had not taken into account the special stepped design of the external walls of the building and made corresponding adjustments when calculating the area of the units, and thus the saleable area of some units did not tally with that stated in the sales brochure.

7. The HKHS explained that it had repeatedly reminded the building consultant that the information to be compiled on the housing estate must be accurate. Since the building consultant is an authorised professional and he has all the relevant information, the HKHS must rely on him to provide information on the building area, saleable area and floor plan, etc. for compiling the sales brochure before putting up the units for sale. This Office notes that the HKHS had depended too much on the building consultant and failed to verify the information, and as a result the saleable area of some units stated in the sales brochure was inaccurate. Although the difference was not much, the HKHS had the obligation to provide accurate information because most applicants would rely on the information in the sales brochure to select the flats. Furthermore, even though the trade has no uniform standard on the ratio between saleable area and usable area, most people will think that "building area" includes the external walls, corridor and partition walls, etc., whereas "saleable area" refers to the usable area inside the unit as this is the practice adopted by private property developers. Since the definition of "saleable area" was not clearly stated in the sales brochure, the buyers might not know that the so-called "saleable area" also included the external walls and the partition walls between units. Therefore, The Ombudsman concludes that complaint point (b) is substantiated.

8. When the HD's Home Ownership Centre (HOC) informed the successful applicants to select the flats, it had enclosed the sales brochure, price list and "Application Guide" with the invitation letter. These documents stated that the buyers must follow the rules and regulations governing the HKHS's Flat-for-Sale Scheme and should apply to the specified banks or financial institutions for loans on the conditions laid down by the HKHS. A list of the specified banks and financial institutions and the mortgage rates offered had also been posted in the HOC. Moreover, the HOC staff had distributed the

list to the successful applicants for their reference prior to selecting the flats, and reminded them that as the housing estate was an HKHS development, the mortgage terms were different from those offered for the HOS. Therefore, The Ombudsman concludes that complaint point (c) is unsubstantiated.

9. This Office notes that after the HKHS confirmed that the area of some units calculated by the building consultant was inaccurate, it had decided to refund the price difference, including stamp duty, solicitors' fees and interest, etc., to the buyers of those units which had a smaller area, but not to recover the price difference from the buyers of those units which had a larger area. All buyers could also cancel the purchase, and the HKHS would compensate them for the losses incurred in the transaction as well as assist them to reinstate their status as green form or white form applicants. If any buyer had difficulties in finding another accommodation after cancelling the purchase, the HKHS would allow him to rent the housing unit concerned at a rental below the market rate. Furthermore, for buyers who chose to cancel the purchase and irrespective of whether they decided to rent the units, they would be given priority to purchase the units of another housing estate under the HKHS' s Flat-for-Sale Scheme. The Ombudsman considers that these arrangements are reasonable. Therefore, complaint point (d) is unsubstantiated.

Recommendations

10. The Ombudsman is pleased to note that after the incident, the HKHS has instituted a series of remedial measures, including compensating the affected buyers. Besides, the HKHS will consider appointing an independent surveyor to audit the area of the units for buildings with a more complicated design. The HKHS will also discuss with the Hong Kong Institute of Surveyors, the Consumer Council and relevant government departments about the proposal of stating the internal area in the sales brochure. Nevertheless, The Ombudsman has made the following recommendations to the HKHS -

- (a) the definition of "saleable area" should be clearly stated in the sales brochure in future for the buyers' reference; and

- (b) in future, the HKHS should state clearly in the sales brochure that the housing estate on sale is not an HOS development, lest buyers should take it for an HOS estate.

Response from the Executive Director of the HKHS

11. The Executive Director of the HKHS does not agree to the conclusion that complaint point (b) is substantiated and has made the following comments -

- (a) The HKHS considers that the complaint about the area of the units was simply a result of the complainants' misunderstanding of the term "saleable area", not their being misled by the information in the sales brochure. The term "saleable area" was clearly defined in the sale and purchase agreement.
- (b) Like other property developers, the HKHS had calculated the saleable area according to the guidelines jointly issued by the Hong Kong Institute of Surveyors and the Consumer Council. Apart from clearly stating the area of the units and showing the floor plan in the sales brochure, the HKHS had also used some completed flats as show flats to enable prospective buyers to have a better idea of the actual environment, design and layout of the housing estate.
- (c) According to the provisions stipulated by the Government, all building information on housing estates must be verified by authorised persons registered with the Government. The HKHS must have confidence in the expertise and judgement of the authorised persons. During the construction process, the HKHS had also repeatedly reminded the building consultant that the information on the housing estate must be accurate.
- (d) According to the current practice of the property developers, information on the "building area" and "saleable area", but not the definition of the two terms, will be provided when private flats are put on sale. It is the normal practice of the trade to measure from the

exterior of the enclosing walls of the units to the middle of the party walls between units when calculating the “saleable area” .

Final Remarks

12. The Ombudsman considers that the major concern of complaint point (b) lies in the HKHS’ s failure to verify the area of the units and the inaccuracy of the information provided in the sales brochure. The HKHS has admitted that the saleable area of some units as stated in the sales brochure did not tally with the fact. Though the HKHS comments that it must have confidence in the judgement of the building consultant, this Office opines that the HKHS, as the developer, has the obligation to monitor the work of the building consultant and to furnish the buyers with accurate information. Furthermore, although the HKHS had stated the definition of “saleable area” in the sale and purchase agreement, the buyers would mostly refer to the information in the sales brochure to select the flats. Even though the HKHS had used some completed flats as show flats, this would not help the buyers to understand the definition of “saleable area” and to know the actual area of the units. All points considered, The Ombudsman concludes that the result of this investigation should remain unchanged.

Office of The Ombudsman

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