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Buying an Unlicensed Development

An unlicensed development is a house built by an unlicensed housing developer. Under the Housing Developers (Control and Licensing) Act (“Act”), a developer who builds more than 4 units of housing accommodation has to apply for and hold a licence authorizing it to do so. A developer who builds 4 or less units does not need to hold a licence and is often referred to as an unlicensed developer. Unlicensed developments are attractive for various reasons. Firstly, they are often found in mature housing estates as they are built on sites previously occupied by old houses which have been torn down. Secondly, as there are only a few units, they are unique; one/few of a kind. The developers are also usually open to changes in the design and features; the buyers can thus personalize the house.

However, unlike licensed developments where the Act prescribes the terms of the sale and purchase agreement between the developers and the buyers, there is no prescribed contract for unlicensed developments. The unlicensed developers will also not be governed by the Act nor fall under the purview of the Controller of Housing. Thus, it is advisable for buyers of such properties to seek legal advice early to ensure that they are suitably protected.

Retention of Monies Pending Issuance of CSC/Title

More often than not, the developer sells the property prior

to issuance of the Temporary Occupation Permit (“TOP”) and the purchase is completed, with most of the purchase price paid, after issuance of TOP.

If the Certificate of Statutory Completion (“CSC”) for the property has yet to be issued, or if there is no separate title for the property, it is important that an adequate amount is held back from the purchase price pending issuance of CSC and separate title. This is to ensure that the developer carries out its obligations in procuring CSC and separate title. The buyer’s financier will also require confirmation of such retention of monies before release of loan.

Paramount Mortgage

If there is a paramount mortgage over the property, the buyer/his lawyers should ask to see the paramount mortgagee’s consent to the sale and terms of discharge. This is because, unlike licensed developments where the Act provides for the sale proceeds to be paid into a project account such that the developer is not able to withdraw or utilize the proceeds until the paramount mortgage is discharged, there is no assurance in the case of an unlicensed development that the sale proceeds paid will be used towards the repayment of the loan/discharge of paramount mortgage.

Ideally, the contract should provide for the paramount mortgage to be discharged and the property freed from encumbrances upon payment made at TOP.

Defects Liability Period

For licensed developments, the developers are contractually obliged to provide a defects liability period of 12 months. The unlicensed developer is, however, under no such obligation unless the contract provides for it. Some such developers will only agree to provide a shorter defects liability period of say, 6 months, whereas others will only assign their contractors' warranties to the buyer, without any personal liability/obligation on their part. Thus, the defects liability period is something which should be negotiated between the buyer and developer from the outset.

As most estate agents' standard Options provide for the property to be sold on an as-is basis, if such Options are used without amendments, the buyer will not be entitled to any rectification of defects.

Issuance of fresh Sale Agreement

Where separate title has not been issued for the property, the buyer will not be able transfer title to the property if he sells the property.

Instead, in the event of subsale, the buyer will assign his sale contract to the subpurchaser. The subpurchaser/his financier will also require the buyer to procure that the developer enters into a fresh sale contract with the subpurchaser.

Under the Act, licensed developers are required to enter into fresh sale contracts with subpurchasers at a prescribed fee (payable to the developer and its solicitors). As the Act is not applicable to unlicensed developments, provision should be made in the contract to impose such an obligation on the unlicensed developer.

The buyer's financier will also require such provision in the contract as they may otherwise have difficulty selling the property in the event that they exercise their power of sale.

Section 54A of Land Titles Act

Under Section 54A of the Land Titles Act, where there is no separate title to the property, the developer is required to obtain a lot number for the property or

deposit a schedule and plan of the proposed subdivision with the Registrar of Land Titles before selling the property. However, there are some developers who proceed to sell the property before such requirement is met. In such cases, the buyer will not be able to lodge any caveat, charge or other instrument against the property. This not only means that the buyer cannot notify of its interest as purchasers in the Land Titles Registry, but also that the buyer will not be able to drawdown on his loan or CPF monies as the financier and CPF Board will require a caveat and charge respectively to be lodged.

Conclusion

The above are just some of the issues affecting unlicensed developments and are by no means exhaustive. If you are considering purchasing such a property, you are strongly advised to engage a solicitor before payment of any monies or signing any contract so that your lawyer can conduct the necessary searches, and review and advise you on the contract.

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The firm is recommended for its work in Information Technology and Intellectual Property by Legal 500, Asia-Pacific 2005/2006, 2006/2007 and 2007/2008 Editions.

The information contained in this newsletter is correct to the best of our knowledge and belief at the time of writing. Specific professional advice on such information should be sought before any action is taken.

If you are interested in any of the topics presented in this newsletter, please contact us using the contact information in the box on the right.

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