THE HOUSING DEVELOPERS (AMENDMENT) RULES, 1980

The Housing Developers (Amendment) Rules, 1980, came into operation on 11 January, 1980,[1] and made the following changes to the Housing Developers Rules, 1976.[2]

1. *Booking Fee*

Rule 10 is now amended so that the maximum amount of booking fee is now 5% of the purchase price.[3] This amendment brings the Housing Developers Rules in line with Rule 3 of the Sale of Commercial Property Rules, 1979. However, although Rule 10 states 5% to be maximum amount, thereby indicating that the booking fee may be less than 5% of the purchase price, a study of the form of Option to Purchase discloses that, the booking fee shall be 5% of the purchase price and no less.

2. *Register of Bookings*

Rule 10A requires every housing developer to maintain a register showing particulars of bookings made by intending purchasers. This register is to be kept in the manner of Form C in the Schedule and contains particulars of the purchasers, the date the option was given, amount of fee paid, receipt number and date, date of delivery of title deeds and draft contract to purchaser's solicitor, the expiry date of the option and, where applicable, particulars of the date of lapsing of the option and money refunded. The Controller or his inspectors may require inspection of the register.

3. *Option for Sale*

The curious omission of a form of option for purchase in the Housing Developers Rules, 1976, is now remedied by Form D (Rule 10B). No amendments to the form can be made unless with the written approval of the Controller. Form D (like Form A of the Sale of Commercial Properties Rules), contains both a Notice to Purchaser as well as an Option to Purchase. However, they differ in the following aspects:—

(a) Amount of booking fee

While Form A (commercial properties) states that the booking fee "shall not exceed 5% of the purchase price", Form D does not give any latitute but states clearly that the booking fee "shall be 5% of the purchase price."

[1] S6/1980.
[2] S182/1976.
[3] Previously, the amount of booking fee varied according to the purchase price, ranging from a maximum of $500/- if the purchase price does not exceed $50,000/- to a maximum of $3,000/- if the purchase exceeds $300,000/-.

(b) Amount payable upon non-exercise of the option

Form D provides that upon non-exercise of the option, the purchaser is entitled to a refund of 95% of the booking fee if the purchase price is $200,000/- or less, and 90% of the booking fee if the purchase price exceeds $200,000/-.

Prior to the 1980 amendments, although no form of option to purchase was provided in the rules, it appeared that in practice, the Controller had prescribed[4] an Option Form to be used by all housing developers, wherein the purchaser was entitled to:—

(i) a refund of 90% of the booking fee if before the expiry of the option he gives the developers written notice of his intention not to exercise the opton and simultaneously returns the sale agreement in duplicate;

(ii) a refund of 80% of the booking fee if he allows the option to expire without giving any notice.

The 1980 amendment Rules therefore increase the amounts refundable upon non-exercise of the option, and thus enhance the purchaser's rights.

In contrast, in the case of commercial properties, failure to exercise the option within the prescribed time of three weeks entitles the purchaser to a refund of only 50% of the booking fee.[5]

(c) Prohibition against assignment of option

Rule 10B(2) prohibits the holder of the option from assigning or transferring the option granted.

(d) New options

Rule 10C prohibits the housing developer from granting a new option to purchase unless the existing option has expired, and this shall be three weeks after the date of delivery of title deeds or copies thereof and the draft contract, to the purchaser's solicitors.

The above amendments to the Housing Developers Rules were intended to curb speculation in the property market, particularly by developers and their nominees, as hitherto, it was a common practice for developers to grant options to their nominees as soon as the premises were ready for booking, and indeed, in some cases, even before bookings were made public. The genuine purchaser who enquired would discover that most, if not all, of these properties had already been booked, and he would have to purchase under a sub-sale from a person to whom the option was first granted. The latter could thus make a comfortable profit without the need to introduce much capital, save the booking fee.

The new prohibition on transfer or assignment of the option will thus, to a certain extent, discourage speculative sub-sales, for while

[4] Presumably under authorisation from the Minister pursuant to s. 21 (4) of The Housing Developers (Control and Licensing) Act, Cap. 250.
[5] Form A, The Sale of Commercial Properties Rules, 1979.

purchasers are still free to assign their interests pursuant to a sub-sale, such assignments can only take place after the signing of the sale agreement, upon which further sums have to be paid to the developer; unlike the assignment of an option which only entails payment of the booking fee.

Likewise, the change in the amount of booking fee will also reduce speculation in the property market, as the amount of booking fee payable can now be quite considerable. To take the example of a house costing $400,000/-; the booking fee is now $20,000/- as compared to only $3,000/- under the old rules. Further, the compelling of housing developers to keep a register of the bookings made will discourage them from freely granting options to nominees, as proper records are now required to be kept, which are open to inspection by the Controller or his officers. Indeed, the register will facilitate the Controller in his investigations, if such investigations have to be made.[6] Failure to comply with the new directions appears to entail the penalties specified in rule 20.

Notwithstanding the above amendments, it is submitted that further safeguards and advantages could have been provided for the purchaser of residential property, particularly in view of the provisions of the Sale of Commercial Properties Act and its rules.

Firstly, there should be a similar provision to clause 7 of the sale agreement for commercial properties. This provides that so long as the unit is subject to a mortgage or other encumbrance, the purchaser shall, instead of paying the instalments to the vendor, pay them to the mortgagee or other encumbrancer, and such payments shall be deemed to be payments to the vendor in due performance by the purchaser of his obligations under the agreement.

A peculiar feature of properties comprised in development projects in Singapore is that they are almost invariably subject to prior encumbrances. This is because it is usual for such projects to be heavily financed by banks and other financial institutions, and these require the security of a first mortgage on the entire land and premises. Purchasers of individual units will therefore find themselves purchasing premises that are already encumbered. Clause 7 therefore provides a good measure of protection by ensuring that all payments made to the vendor by the purchaser would be applied towards discharging all prior encumbrances on that particular unit.

Secondly, rule 17 of the Housing Developers Rules should be amended in the light of rule 8 of the Sale of Commercial Properties Rules. Both these rules provide for the situation of an assignment by the purchaser of his interest under the sale agreement, and specify that the developer shall not withhold his consent to the assignment. Rule 8 of the Sale of Commercial Properties Rules, 1979, however, goes further to require the developer, if required by the assignee, to enter into a fresh agreement with the assignee, containing the same terms and conditions as the original agreement for sale. It also

[6] See ss. 13 to 18 of the Housing Developers (Control and Licensing) Act, Cap. 250.

prohibits the developer from charging any sum in excess of $200/- for so doing.

In contrast clause 17 is loosely worded, for it does not require the developer to enter into a fresh agreement with the assignee. Instead, the limit of $200/- as administrative fee appears to relate only to the giving of consent by the developer, to the proposed assignment. The result is that housing developers are free to charge any amount as consideration for entering into a fresh agreement with the assignee and it is known that in practice, developers have charged as much as several thousand dollars as consideration for entering into fresh agreements with the assignees. The problem is compounded because a fresh agreement between the developer and the assignee is a pre-requisite of most financial institutions for the grant of a loan to finance the sub-purchase. Indeed, clause 17 need not be amended if solicitors to financial institutions were prepared to advise their clients that it was proper to lend money on the security of an assignment of an assignment (of the original purchaser's interest under his sale agreement). As this seems unlikely, it is submitted that the loophole that is open to developers under clause 17 should and must be closed. Purchasers should not be made to pay ridiculous sums under the guise of "administrative fees" when it is plain that such "administrative" work entails little more than inserting the name of the assignee and particulars of the property bought into readily prescribed and printed forms.

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