THE HOUSING DEVELOPERS (AMENDMENT) RULES, 1981

The Housing Developers Rules, 1976, amended only last year,[1] are once again, the subject of amendment. The 1981 Amendments take effect from 17 July 1981,[2] and, like their predecessor, the 1980 Amendment rules, are designed to curb speculation and bring prices of residential properties down to a more realistic level. These latest amendments are geared towards making speculation a more costly affair, requiring greater expenditure and entailing higher risks. Thus, in the main, the amendments take the form of higher booking fees and stiffer penalties for defaults in payment.

In brief, the major amendments to the Rules are as follows:-

1. *Raising of Booking Fee*

The 1980 Amendments raised the booking fee to a maximum of five per cent (5%) of the purchase price. This has now been increased

[1] S6/80 w.e.f. 11 January 1980. See Commentary (1980) 22 Mal. L.R. 149.
[2] S 239/81.

to ten per cent (10%) of the purchase price in the short space of only eighteen months.[3]

The provision however, allows developers some latitude in their charging of booking fees, for the ten per cent requirement is the maximum chargeable, the implication therefore being that a developer can charge a booking fee that is less than ten per cent. This would clearly defeat the purpose of the amendment, as the intention is to raise booking fees so as to deter all except the genuine purchaser. The situation appears to be saved by the prescribed form of Option to Purchase, which clearly stipulates that the booking fee shall be ten per cent. In addition, Rule 10(3) prohibits any amendment, deletion or alteration of the form, save with the written approval of the Controller of Housing. Thus, a developer who wishes to charge a booking fee that is less than ten per cent of the purchase price can still do so, provided he has obtained the Controller's written approval. This will be difficult in a rising property market, given the government's attitude towards speculation.

2. *Raising of First Instalment Payment*

The first instalment payment is raised from ten per cent (10%) to twenty per cent (20%) of the purchase price, thereby necessitating a re-adjustment in the schedule of payments. The fourth and fifth payments of ten per cent each (on completion of the brick walls with door and window frames in position, and on completion of the roofing and internal plastering) are now reduced from ten per cent at each stage to five per cent at each stage.[4]

3. *Forfeiture on Default*

A developer can now forfeit from the instalment payments made, a sum of up to twenty per cent (20%) of the purchase price.[5] This is indeed, the amount payable under the first instalment, so that this entire sum stands liable to be forfeited on the purchaser's default. Previously, a defaulting purchaser only lost twenty-five per cent of the instalments that he had actually made.

It is this provision and the raising of the first instalment payment that forms the main legislative weapon in the fight against speculators, as taken together, they make speculation a costly and risky affair. To take the example of a house that costs $400,000/-, the position prior to the amendment is that a purchaser who has paid half the purchase price, amounting to $200,000/-, can still rescind and recover $150,000/-; the developer only being allowed to retain and forfeit $50,000/- (25% of all payments made by the purchaser). Under the new rules, however, the purchaser will have to pay the sum of $80,000/- as soon as he signs the sale agreement; furthermore, this entire sum will be forfeited if he defaults.

These two changes were viewed with considerable alarm by developers, who felt that they were too drastic and ill-timed, the

[3] Rule 10 as amended in 1981.

[4] Rules 5 & 6, 1981, amending clause 3A of Form A and Rules 10 & 11, 1981, amending clause 3 and alternative clause 3 of Form B.

[5] Rule 7, 1981, amending clause 5(3) of Form A; Rule 12, 1981, amending clause 5(3) of Form B.

property market having already taken a downward turn.[6] On the other hand, it was generally regarded that it was the developer who stood to benefit, as not only was his liquidity enhanced, his risks were simultaneously reduced. Indeed, it was the genuine purchaser who was adversely affected, although it is hoped that in the long run, he will stand to gain from the fall in prices to a more realistic level. The immediate effect of these amendments on the purchaser is that he must ensure that he has at least twenty per cent of the purchase price before he signs the sale agreement (a not inconsiderable sum), and he stands to lose this entirely if he should fail to make the progress payments. The government has recognised this dilemma faced by the genuine purchaser, and has sought to alleviate it by allowing the release of Central Provident Fund contributions for the purchase of private property. This, however, benefits only those who are contributors to the fund and does not help those who are self-employed, but at least, it is a step in the right direction to help citizens own their own homes.

4. *Re-Sale by the Purchaser*

A new Rule 17 replaces the old, thereby closing a loophole which was much taken advantage of by some developers.[7] The previous clause 17 only required developers to give their consent to a proposed assignment, for which they could charge a maximum of $200/-. However, it contained no mention of developers being required to give a fresh sale agreement to the assignee. The result was that developers would charge $200/- for consenting to the proposed assignment and then charge an additional sum (at their discretion) for entering into a fresh agreement with the new purchaser. Developers can no longer do this, for the new Rule 17 makes it clear that when a purchaser assigns his interest under a sale agreement, the developer shall within three weeks, enter into a new agreement with the intending assignee, containing the same terms and conditions. The maximum amount developers can charge for this is the sum of $200/-.

5. *Interest Chargeable on Late Payment*

The interest rate for late payment of instalments is now raised from twelve per cent (12%) per annum to two per cent (2%) above the prevailing prime rates of the four local banks (i.e. DBS, OCBC, OUB, UOB).[8]

6. *Special Provisions relating to Strata Title Properties*

In the case of properties to be comprised in a subsidiary strata certificate of title, the form of agreement for sale and purchase is further amended to incorporate the following:-

(a) *New Clause 12(3)*[9]

This new clause requires the purchaser upon taking possession of the housing unit or fourteen days after receipt of the notice to

6 Straits Times, 20 July 1981.
7 Rule 3, 1981.
8 Rule 7, 1981, amending clause 5(2) of Form A, Rule 12, 1981, amending clause 5(2) of Form B.
9 Rule 13, 1981, amending clause 12(3) of Form B.

take possession (whichever is earlier), to pay the developers six months' maintenance fees in advance at the rate specified in the sale agreement. Subsequently, payments will be made quarterly and in advance until the maintenance of the building is taken over by the Management Corporation.

Late payments carry an interest rate of (again), two per cent over the average prime rates of the four major local banks in Singapore.

(b) *New Clause 16*

This new clause requires the estimated share value to be stated in the sale agreement. This should provide prospective purchasers with an indication of the value of their units in proportion to the entire project, and thus enable them to appreciate the extent of their rights and liabilities *vis-a-vis* the other owners.

These new amendments relating to Strata Title properties should resolve a major problem regarding the maintenance of new buildings, as the collection of maintenance fees from purchasers has often been difficult, owners not only querying the amount levied on their units, but also refusing to pay. The question however, is what is the amount that developers can stipulate in clause 12(3)? How is it arrived at? Will it not be an arbitrary figure? Until the Management Corporation takes over, the maintenance of the building falls on the developers. It appears that they must prepare a budget following the guidelines on Maintenance Contributions issued by the Buildings and Management Unit. The amount to be levied on each strata lot owner will be proportionate to the share unit of his lot, and this share unit is required to be stated under the new clause 16. The problem however, is that the time lapse between the date of contract and the date of taking possession may be quite considerable, with the effect that the sum stated under clause 12(3) cannot be an accurate reflection of the actual maintenance costs. Nonetheless, such a provision is necessary for the maintenance of the property prior to the formation of the Management Corporation. What is needed is some safeguard to ensure that developers do not charge inflated rates for maintenance contributions, and this is found in section 6A of the Buildings and Common Property (Maintenance and Management) Act, 1973,[10] which prohibits developers from collecting maintenance charges from purchasers unless with the prior written approval of the Commissioner of Buildings. In practice, the Commissioner requires inspection of the developer's workings on the amount of maintenance contributions, and will presumably withhold approval in the case of inflated estimates.

Conclusion

It has earlier been stated that the main objective of the 1981 Amendments was to curb speculation in real property, so that prices can fall to a more realistic level to enable the genuine purchaser to be able to buy his own home. Indeed, the government has attacked speculation in a number of ways, chief amongst which has been amendment of the Housing Developers Rules so as to increase booking

[10] Act 23 of 1973 as amended by the Land Titles (Strata) (Amendment) Act, 1967.

fees and penalties on forfeiture, so that all but the genuine purchaser will be deterred. In 1980, the government introduced a new requirement for housing developers — they must maintain a register of bookings made by intending purchasers, containing various particulars, which are open to inspection by the Controller of Housing or his deputies. It was hoped that this would discourage speculators, as their activities will now be on record. Subsequently, the government took yet another step in the fight against speculation — the imposition of *ad valorem* stamp duties on sub-sales. At the same time, the government has also taken steps to protect purchasers from developers who may not be able to complete their projects. All developers are now required to open a project account[11] with a bank or major financial institution wherein must be directed all progress payments from purchasers. These payments can only be used towards defraying actual construction costs and professional fees directly connected with the development project. Developers can therefore no longer utilise progress payments to finance other projects.

It can be seen that in Singapore, the property scene is being closely watched by the government and measures have been taken not only to discourage the avid speculator but also to safeguard and assist the purchaser. Whether the 1981 Amendments will achieve their objective remains to be seen, but what is clear is that in the Singapore context, any change in the property market cannot be attributed to any single piece of legislation, but will be due to a combination of various factors, of which government intervention plays a not insubstantial role.

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[11] The "Project Account Scheme" was announced by the Controller of Housing on 30 July 1981, to take effect as from 3 August 1981. It replaces an earlier scheme announced on 14 January 1981, that required developers to furnish an undertaking from a bank or financial institution to give a full refund of progress payments should the developers "go bust". This scheme was met with great opposition on various grounds, one of which was that it would lead to increased costs for purchasers.