

LCQ12: Building Management

Following is a question by the Hon James To and a written reply by the Secretary for Home Affairs, Mr Tsang Tak-sing, in the Legislative Council today (March 16):

Question:

Recently, some residents in Tai Kok Tsui have complained to me that a developer has acquired around 30% of the flats in their building, but the developer has long been defaulting payment of management fee for those flats it owns, causing financial and operational difficulties to the owners' corporation (OC) of the building. Furthermore, there are media reports from time to time about developers trying to acquire flats by means of harassment. In this connection, will the Government inform this Council:

(a) of the number of requests for assistance involving acquisition of flats allegedly by means of harassment received respectively by government departments such as the Home Affairs Department, Buildings Department and Hong Kong Police Force in each of the past three years, as well as the details of each case;

(b) as the Estate Agents Authority (EAA) issued a practice circular last year to regulate the practices of estate agents in the acquisition of flats in old buildings, whether it knows the total number of complaints involving acquisition of flats received by EAA in the past three years, and among such complaints, the number of substantiated cases, as well as the details of and the sanctions imposed in each case; whether the situation has improved after EAA issued the circular last year;

(c) as the two pilot schemes introduced by the Development Bureau in January this year only target at owners who contemplate compulsory sale applications, of the Government's response to the proposal from some members of the public that the Government should regulate the procedures for acquiring flats in old buildings; whether the Government has studied ways to assist minority owners in situations similar to the aforesaid one;

(d) as the Secretary for Home Affairs (SHA) may apply, under the Building Management Ordinance (Cap. 344), to the Lands Tribunal for appointing an administrator for individual buildings, whether SHA had exercised such power in the past three years; if he had, of the details of each case, and whether such cases involved flats being acquired;

(e) as the OC of the aforesaid building situated in Tai Kok Tsui intends to continue to manage the building itself, what assistance the Home Affairs Bureau will offer to the OC, and whether it will intervene for the purpose of mediation; and

(f) targeting at the management disputes arising from the acquisition of flats at present, whether the Government will consider afresh establishing a building affairs tribunal or similar organisation to provide a simple way for OCs to handle such disputes?

Reply:

President,

Regarding the six parts of the question, having co-ordinating the information from the Development Bureau (DEVB), the Estate Agents Authority (EAA), the Buildings Department (BD), the Hong Kong Police Force (the Police) and the Home Affairs Department (HAD), the reply is as follows:

(a) According to the HAD's statistics on building management cases, no further breakdown on cases concerning acquisition of flats is available. The HAD, therefore, does not have information in this regard.

If the means of harassment involves a suspected criminal offence, depending on the circumstances of each case and based on various crimes, such as intimidation and criminal damage, the Police may arrest and prosecute against the offender. The Police does not have the statistical breakdown of the criminal cases concerning acquisition of flats.

As for the BD, it has not received any requests for assistance involving acquisition of flats allegedly through acts of harassment in the past three years.

(b) The EAA is greatly concerned about the practice of estate agents in the acquisition of old buildings. In May 2010, the EAA invited some estate agents engaged in the acquisition of old buildings to attend a seminar to discuss estate agents' practices in such acquisition activities, and issued a Practice Circular in August 2010 to stipulate clearly the relevant requirements as set out in the law and the Code of Ethics with which practitioners should comply when engaging in such activities.

The Practice Circular requires that estate agents carrying out acquisition of old buildings must inform their clients whether they are acting on behalf of the owner, the purchaser, or both, and disclose to their clients the monetary reward or other benefits they will receive in relation to the acquisition. They must not harass owners or employ any improper tactics to exert pressure on the owners to sell their flats, and they should advise elderly owners to be accompanied by family members or close relatives when entering into price negotiation. They must also explain the terms and conditions contained in the agreement for sale and purchase to the owners, and should avoid making arrangements for owners to sign on any provisional agreement for sale and purchase (PASP) with the terms of the transaction (such as the parties involved in the agreement, property price, deposit, transaction date, etc.) left blank.

The EAA noted the media reports recently that the flat owners of a residential building in Tai Kok Tsui indicated that they were harassed by the developer in acquisition of the building, and that the developer did not pay management fees in arrears. Although the EAA has not received any complaints from the flat owners of that building as at March 10, 2011, it is taking proactive steps to look into the case.

From 2008 to end of February 2011, the EAA received nine complaints relating to the acquisition of old buildings. Four were received before EAA issued the practice circular, and the other five were received thereafter. The complaints were about estate agents allegedly arranging vendors to sign PASPs with essential clauses left blank, giving false and misleading information about the percentage of ownership acquired, misleading the vendors to sell the properties at below market price, and misleading the vendors that they could cancel the PASPs after signing them, etc. Among the nine complaints, one was substantiated and the estate agent concerned was sanctioned with admonishment after inquiry hearing for failing to enter into an estate agency agreement with the vendor. Four complaints were withdrawn by the complainants, and the remaining four are still under investigation.

(c) As regards the regulation of the procedures for acquiring flats in old buildings, the EAA has issued a Practice Circular (Circular No. 10-05 (CR)) in August 2010 to set out guidelines on the proper practice to follow when estate agents are engaged in the acquisition of old buildings. The DEVB and the EAA have stepped up collaboration to facilitate the handling of related complaints by the EAA through case referral.

The DEVB indicates that if any minority owner faces harassment suspected to be related to acquisition activities, including any threat to public health or law and order,

he or she can seek help from the relevant government departments, including the Food and Environmental Hygiene Department (FEHD) and the Police.

(d) In accordance with the Building Management Ordinance (Cap 344), the Secretary for Home Affairs (SHA) and the Lands Tribunal are empowered to order a management committee, the forerunner and/or the executive arm of an owners' corporation (OC), to appoint a building management agent if there is a danger or risk of danger to the occupiers or owners of the building. In the past three years, given that we have not come across any case in which the circumstances of the building had warranted taking action under the Ordinance, SHA has not ordered any management committee of a building to appoint an administrator under the Ordinance.

(e) The HAD would assist owners in holding an owners' meeting in a bid to resolve financial and operation problems of the OC. If the developer defaults payment of management fee for those flats it owns, the HAD may advise the OC to recover the arrears by selling or registering charges against the developers' interest in the land in the Land Registry according to the deed of mutual covenant and the Building Management Ordinance. If the OC has difficulty in maintaining the hygiene and security of the building, the HAD would help refer them to the FEHD and the Police for follow up action.

Where necessary, District Offices under the HAD will refer those owners who are in need to any of the 10 Property Management Advisory Centres of the Hong Kong Housing Society for free appointments with lawyers, during which professional legal advice can be sought. If the parties concerned are willing to resolve their disputes through mediation, the HAD will make the necessary arrangements for free professional mediation service. The Lands Tribunal also offers free consultation services to any party seeking mediation and provides the parties concerned with a list of qualified mediators.

(f) The Government has been encouraging owners to resolve disputes on building management by other means, such as communication or mediation, rather than litigation, so as to attain a win-win solution and reduce the financial burden on both parties. If the disputes have to be resolved by litigation, they may be dealt with by the Lands Tribunal. For cases involving a relatively small amount of money, i.e. \$50,000 or below, they may be taken to the Small Claims Tribunal as other small claim disputes.

The proposal on establishing a building affairs tribunal involves a number of complicated policy and legal issues, such as the legal status of the tribunal, as well as its institutional arrangements and its interface with the Lands Tribunal. Furthermore, some are of the view that there might be duplication of efforts between a new adjudicating mechanism and the existing mechanism. The Government will carefully consider these views in deciding the way forward.

The mediation services currently provided by the Lands Tribunal can also provide an alternative to the OCs in dealing with disputes.

Ends/Wednesday, March 16, 2011

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