

Bureaucrats control the property market

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The government has announced that it will release some sites for the development of residential projects for restricted sale to Hong Kong residents only, with details of terms and conditions yet to be announced.

It is easy to criticise the new policy and say it will have little impact on cooling prices or increasing supply of much-needed apartments. But critics ought to be aware that getting a development off the ground and finishing it is a lot more complicated than one may think.

Government land sale conditions come in different forms. There are development parameters setting out gross floor area (GFA), uses, height, and other requirements. In addition, approval is required from the Lands Department for detailed design elements, as well as the Buildings Department, for matters covered by the Buildings Ordinance. These detailed design elements include but are not limited to design and disposition, building setback, provision of sales offices, recreational facilities, landscaping, car parking provision and layout, and many more.

In the 'old days', there were clear guidelines indicating what may be approved, and what would not be approved. But in recent years, especially after the 'Sustainable Design Guideline' came into effect in April 2011, the control standard has become increasingly stringent. Only a few guidelines are available on how the discretionary power is exercised or not exercised.

The changes appear to be prompted by the desire to reduce building bulk, but in fact the government has bowed to public pressure and treated every lot-owner/developer under the slogan of 'Developer Domination'.

The Government talks about a level playing field. However, there is no fairness in land sale conditions as the Lands Department, acting in the capacity of landlords, is free to exercise its discretions in land sale contracts. The Lands Department is the biggest landlord and it dominates the market rather than legitimate businessmen.

The imbalance is now getting to the extreme with Lands Department using every tool to make owners to pay for the approval. How they do that? It's simple as every land sale document in recent years comprises this clause:

Supervisory
and overhead
charges

(46) Wherever in these Conditions it is provided:—

(b) that the prior approval or consent in writing of the said Director is required, the said Director may give the approval or consent on such terms and conditions as he sees fit or refuse it at his sole discretion.

I have come across situations when the Department invoking this clause to charge additional land premiums as a condition to granting approval. The approvals required are part of the construction process but is now becoming a pattern of "paying for approval".

There is no corruption involved but it's simply unfair when a purchaser, after paying for a piece of land, is subsequently asked to pay more for a product that the market desires which the Government did not envisage when it sold the land. This is absurd and not something a responsible landlord would do to extort money from his tenants.

But the Lands Department is somehow encouraged to operate in this manner by the administration. It is because this will receive more revenue, please the pressure groups, and most of all penalise the business sector. It exercises discretion unfairly to the disadvantages of developers.

This is not healthy for the economy and is one of the reasons why there are so few new players in the market. It's a risky business when land sale contracts are so unfair and guidelines are historic and non-binding on the government.

Previously Hong Kong did not have this problem and we trusted the government to act reasonably. Unfortunately, this is no longer the case when it uses land sale conditions not to administer land resources but to penalise its tenants.

So who dominates the property market? Perhaps the new Director of Lands can look into the matter of a level playing field.

When the late Mr Bob Pope was the Director of Lands, he organised lunches with surveyors and listened to our views. Nowadays, any outside office meetings are construed as collusion.

The problem lies with the fact that the Lands Department, acting in the capacity of landlord, is free to exercise its discretion under land sale contracts. Their rules are also different from Buildings Department and Planning Department so how can you fast track a development when hurdles are installed.

It can also revoke approvals when revised designs are submitted and these rulings are not subject to Judicial Review. Any dispute on lease interpretation or design can only be resolved in the courts, and may take years to settle.

The system has to be changed on grounds of equity, fairness, and expedited development.

While developers and the public may welcome initiatives that bring down property prices, getting new supply of flats to the market in a timely and fair manner is more important and could cure the root of the problem.

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