

REGULATION OF SALES OF FIRST-HAND RESIDENTIAL PROPERTIES BY THE SALES OF FIRST-HAND RESIDENTIAL PROPERTIES AUTHORITY

Executive Summary

1. In April 2013, the Residential Properties (First-hand Sales) Ordinance (Cap. 621 — RPFSSO) came into full implementation. RPFSSO aims at enhancing the transparency and fairness of the sales of first-hand residential properties (FRPs), strengthening consumer protection and providing a level playing field for vendors of FRPs. Detailed requirements are set out in RPFSSO relating to sales brochures, price lists, sales arrangements, registers of transactions, show flats, viewing of completed residential properties, advertisements, the mandatory provisions for the preliminary agreement for sale and purchase, and the mandatory provisions for the agreement for sale and purchase for each development. The Sales of First-hand Residential Properties Authority (SRPA) was set up in early April 2013 for initiating compliance checks and inspections, conducting investigations and educating the public on matters relating to RPFSSO. In 2021-22, the estimated expenditure of SRPA was \$64.33 million. The Audit Commission (Audit) has recently conducted a review to examine the regulation of sales of FRPs by SRPA with a view to identifying areas for improvement.

Compliance monitoring

2. The Inspection and Monitoring Unit (IMU) is mainly responsible for monitoring vendors' compliance with RPFSSO by conducting documentary checks on sales documents. The procedures of the documentary checks on sales documents are promulgated in SRPA's Procedures for Inspection and Monitoring (hereinafter referred to as SRPA's Procedures). A checklist is designed for each type of sales documents and IMU should complete documentary checks within the time limits specified in SRPA's Procedures (paras. 2.4 to 2.6).

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3. *Need to ensure timely completion of documentary checks on sales documents.* Audit analysed the documentary checks on sales documents by IMU for the 27 first-hand residential developments which commenced sale from July to December 2021 (involving 291 checklists) and found that:

- (a) there were delays in completing 25 (9%) checklists by the Assistant Inspection Officers, ranging from 1 to 174 working days (averaging 30 working days), with 3 exceeding 70 working days. There were also delays in counter-checking 33 (11%) checklists by the Inspection Officers, ranging from 1 to 20 working days (averaging 6 working days); and
- (b) for the 15 checklists involving possible non-compliances, there were also delays in endorsing 9 (60%) checklists by the Senior Inspection Officers (SIPOs), ranging from 1 to 19 working days (averaging 10 working days) (para. 2.7).

4. *Room for improvement in checking advertisements.* A contractor is engaged by SRPA to provide an online searching platform which allows SRPA to search, view and download local advertisements related to sales of FRPs round-the-clock (para. 2.10). Audit's examination of SRPA's records for the 27 developments which commenced sale from July to December 2021 revealed the following areas for improvement:

- (a) SRPA did not make use of the searching platform to identify the related advertisements in newspapers. While SRPA could not identify any newspaper advertisement for 4 (15%) of the 27 developments, these advertisements could be found in the searching platform for 2 of the 4 developments. Furthermore, SRPA did not make use of the searching platform to conduct checks on outdoor advertisements (para. 2.11); and
- (b) no checks had been conducted on printed advertisements collected from sales offices and/or show flats for all the 27 developments. Despite that television (TV), radio and mobile advertisements could be identified for 17 developments in the searching platform, SRPA did not check the advertisements for 2 (7% of the 27 developments) of them (para. 2.12).

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5. ***Non-compliance with inspection procedures for on-site inspections of show flats.*** SRPA conducts inspections to ensure show flats made available for viewing by the public complied with RPFSSO (para. 2.15). Audit’s examination of the checklists of 37 inspections of show flats (their first sales brochures were submitted to SRPA in 2021) revealed that:

- (a) ***Timeliness of inspections.*** In 1 (3%) inspection, it was conducted on the sixth day on which the show flat had been opened for public viewing (i.e. a delay of one day). Furthermore, in 17 (46%) inspections, the dates show flats were first available for viewing were not documented in the checklists, and as a result, Audit was unable to ascertain whether the time limit of conducting inspections was complied with;
- (b) ***Delay in submitting completed checklists and no-endorsement checklists.*** There were delays in 22 (59%) inspections in submitting the completed checklists to SIPOs within the 2-working day time limit, ranging from 1 to 7 working days (averaging 2 working days). In 7 (19%) inspections, the completed checklists were not endorsed by SIPOs; and
- (c) ***Reporting possible non-compliances identified during inspections.*** Possible non-compliances with RPFSSO were identified in 5 inspections by SRPA. For all the 5 inspections, the inspection officers informed the respective vendors of the possible non-compliances identified on site and rectifications were made by the vendors. In the checklists, such incidents were only documented as “other observations” and the show flats were considered “in order”. While these inspections had been reported and endorsed by SIPOs, the possible non-compliances were not reported to the Chief Inspection Officer and no further investigation was taken subsequently (para. 2.18).

6. ***Built-in items not included in sales brochures but found in show flats.*** In 10 (27%) of the 37 inspections selected for checking by Audit, SRPA’s inspection records showed that there were built-in items (e.g. storage cabinets, shoes cabinets) in the living rooms and/or dining rooms of the show flats, but such items were not set out in the sales brochures of the developments. According to RPFSSO, there are only requirements on setting out the descriptions of interior fittings for specified items (e.g. “Bedroom”, “Bathroom” and “Kitchen”) but not for living rooms and dining rooms (para. 2.20).

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7. *Need to improve documentation on inspections of availability of sales documents.* IMU conducts inspections at the sales offices to ascertain whether the vendors have made the sales documents available for the public free of charge. SRPA requires inspection officers to record in the checklists the estimated quantities of sales documents available for collection and indicate whether hard copies of sales documents available for collection/inspection are placed at a location that is reasonably visible to any person entering the place. Photographs are required to attach to support the observations. Audit examined the completed checklists of 20 inspections conducted by SRPA in 2021 and found that in all 20 checklists, the photographs attached could not show the quantities reported as well as the locations where the sales documents available for collection/inspection were placed (paras. 2.22 to 2.24).

8. *Room for improvement in conducting and documenting inspections of operation of sales arrangements.* Audit noted that no checklists had been devised for the inspections of operation of sales arrangements at sales offices. Furthermore, checking procedures and inspection items had not been drawn up in SRPA's Procedures and no time limit was set out for submitting inspection reports to the supervisors. Audit examined 15 inspection reports for inspections conducted in the period from April to June 2021 and found that the format and items covered in the inspection reports varied and 4 inspection reports were submitted over 2 working days after the dates of inspections (up to 5 working days in 2 inspection reports) (paras. 2.25 and 2.26).

Complaints and investigations

9. The Complaints Unit is responsible for handling enquiries and complaints relevant to RPFSSO. Since the full implementation of RPFSSO on 29 April 2013 and up to 30 June 2022, SRPA had received 10,741 enquiries and 544 complaints. The Investigation and Compliance Assurance Unit (ICAU) is responsible for investigating cases of suspected contravention of RPFSSO referred from different sources. Depending on the investigation result, SRPA may refer the case to the Department of Justice (DoJ) for advice on prosecution or curtail the investigation as a non-substantiated case. Since 29 April 2013 and up to 30 June 2022, there was a total of 2,189 investigation cases (paras. 3.2 and 3.12 to 3.14).

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10. ***Room for improvement in handling complaints.*** Audit examined 20 (14%) of the 143 complaint cases received from January 2021 to June 2022, of which 16 cases were related to suspected contravention of RPFSSO and referred to ICAU for investigation. Audit's examination of these 16 cases as of July 2022 revealed that:

- (a) ***Delay in referrals for investigations.*** 11 (69%) cases were referred over three working days after receipt of the complaints, contrary to the requirement in the Complaint Handling Procedures;
- (b) ***Inconsistent practice in following up with complainants.*** Different practices were adopted in following up with complainants. For example, SRPA was unable to contact the complainants concerned in 3 cases while progress update was provided to the complainants in 6 cases but not in the remaining 7 cases; and
- (c) ***Long time taken to close complaint cases.*** Although investigation work and all the follow-up actions had been completed for 5 of the 16 cases, the Complaints Unit took 47 to 88 days (averaging 71 days) to close the cases (para. 3.6).

11. ***Need to draw lessons from completed investigation cases.*** As at June 2022, DoJ had given advice on 251 investigation cases referred by SRPA from January 2019 to June 2022. Among these, prosecution actions were taken in 11 cases and 37 counts of offences were convicted under these 11 cases with fines totalling \$468,000. Audit notes that there is scope for improvement in collecting evidence for enhancing the prospect of securing a conviction in some offences. For example, in one case, SRPA officers did not conduct any site inspections to the sales offices to confirm whether there was any non-compliance by the vendor to make available hard copies of price lists for collection by the general public (section 32(1) of RPFSSO). Furthermore, while there was no record of submission of hard copies of price lists to SRPA by the vendor, SRPA did not take prosecution action on the possible infringement in the provision to make available hard copies of price lists to SRPA on the first day on which it is available to public (section 32(4)(a) of RPFSSO) after consulting DoJ (paras. 3.16 and 3.17).

12. ***Long time taken in completing investigation cases.*** Of the 348 investigation cases completed during the period from January 2019 to June 2022,

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Audit's analysis found that 265 (76%) cases did not meet the time targets stipulated in ICAU's Practice Note. Audit examined 15 cases and found that:

- (a) ***Long time taken for commencing and conducting investigation.*** ICAU took 1 day to 15 months to commence investigation after case receipt (averaging 5 months). In 6 cases, they were left unattended by ICAU for more than 3 months after the investigation commenced; and
- (b) ***Long time taken for preparing investigation reports/case reports.*** The time required to prepare the investigation reports/case reports varied, ranging from 5 days to 17 months (averaging 7 months) after the investigation work was completed (paras. 3.19 and 3.20).

Publicity and education

13. ***Low utilisation of the SRPA Resource Centre.*** SRPA operates the SRPA Resource Centre where hard copies of sales brochures and price lists are kept and two computer terminals are provided for viewing by the public. Audit found that the average number of visitors per month decreased by 81% from 9.1 in 2013 (since April) to 1.7 in 2022 (up to June). As of June 2022, SRPA has not conducted any studies or reviews on the utilisation or effectiveness of the Resource Centre (paras. 4.2 to 4.4).

14. ***Delay in showing sale suspension/termination of the developments on the Sales of First-hand Residential Properties Electronic Platform (SRPE).*** SRPA maintains an electronic database (i.e. SRPE) containing the sales brochures, price lists, and registers of transactions of individual first-hand residential developments. As of 24 June 2022, there were 94 developments with sales suspended/terminated within 18 months on SRPE. In 34 (36%) cases, there were delays in informing SRPA the sale suspension/termination of the developments by the vendors, among which 22 cases were having delays of more than 7 days with an average delay of 73 days (ranging from 10 to 291 days) (paras. 1.7(e) and 4.14).

15. ***Need to enhance performance monitoring of disseminating digital publicity materials.*** From April 2013 to June 2022, \$8.2 million was incurred by SRPA in the publicity and education activities. While performance reports are required to be provided by the contractors of the online marketing campaign and

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online platform advertisement (costing about \$800,000 and \$100,000 respectively), such requirements have not been included in the contracts for advertisements placed in Mass Transit Railway In-train TVs and TVs installed in commercial and private residential buildings (costing about \$2,376,000 and \$520,000 respectively) (paras. 4.18 and 4.19).

Way forward

16. According to the then Transport and Housing Bureau, the main functions of RPFSSO and SRPA are to protect the interest of purchasers of FRPs through enhancing transparency of property and transaction information and provide a level playing field for vendors of FRPs. In late November 2014, the Bureau said that it would review the effect of the current legislative framework as they move along, after accumulating sufficient experience in implementation (paras. 5.2 and 5.5).

17. *Need to keep monitoring the implementation of RPFSSO.* RPFSSO has been implemented for nearly 10 years and new issues have emerged since the enactment of RPFSSO. Since the implementation of RPFSSO, SRPA has adopted non-legislative means to address some issues which have public concerns, including the registration of intent in the sales of FRPs, mortgage plans and promotion schemes offered by vendors and transaction information of FRPs. Audit's examination has revealed that there is scope for improvement in the three pillars of work of SRPA, namely compliance monitoring, investigation work, and public education. In Audit's view, SRPA needs to step up efforts in the three pillars of work. Furthermore, the Housing Bureau, in collaboration with SRPA, needs to keep monitoring the implementation of RPFSSO and consider suitable means to address issues with public concerns (paras. 5.4 and 5.5).

Audit recommendations

18. **Audit recommendations are made in the respective sections of this Audit Report. Only the key ones are highlighted in this Executive Summary. Audit has recommended that the Director, Sales of First-hand Residential Properties Authority should:**

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Compliance monitoring

- (a) **take effective measures in ensuring staff's compliance with the time limits of completing documentary checks as set out in its internal procedures (para. 2.13(a));**
- (b) **make better use of the searching platform to improve efficiency in checking advertisements (para. 2.13(c));**
- (c) **remind SRPA staff to collect printed advertisements from sales offices and show flats for documentary checking purposes and to conduct checking of TV, radio and mobile advertisements in accordance with the promulgated procedures (para. 2.13(d));**
- (d) **take measures to enhance the compliance with inspection procedures of show flats by SRPA staff and consider introducing new measures to enhance the effectiveness and efficiency of inspecting show flats (para. 2.29(a) and (b));**
- (e) **keep in view the general trend on the provision of interior fittings in a property and take measures to address the situation where necessary (para. 2.29(c));**
- (f) **strengthen the documentation on the inspections of availability of sales documents (para. 2.29(d));**
- (g) **issue guidelines specifying the procedures in conducting inspections of operation of sales arrangements and the documentation and reporting requirements of the inspection results (para. 2.29(e));**

Complaints and investigations

- (h) **take measures to ensure compliance with the Complaint Handling Procedures in referring complaint cases for investigation in a timely manner (para. 3.10(a));**

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- (i) lay down guidelines setting out the follow-up actions to be taken with the complainants and the time frame for closing complaint cases (para. 3.10(b));
- (j) sustain its efforts in drawing lessons from completed investigation cases with a view to improving the prospect of securing a conviction in similar cases in future (para. 3.24(b));
- (k) expedite actions in completing investigation cases (para. 3.24(c));

Publicity and education

- (l) review the utilisation and effectiveness of the Resource Centre and explore measures, where appropriate, to improve the utilisation of the Resource Centre (para. 4.9(a));
- (m) remind vendors to inform SRPA the sale suspension/termination of the developments in a timely manner (para. 4.16(b));
- (n) consider including requirements on the provision of performance reports by contractors (para. 4.22(a)); and

Way forward

- (o) where appropriate, step up efforts in conducting compliance monitoring, handling complaints, carrying out investigations on suspected cases of contravention of RPFSSO, and educating the trade and the public, taking into account the findings of this Audit Report (para. 5.7).

19. Audit has also *recommended* that the Secretary for Housing, in collaboration with the Director, Sales of First-hand Residential Properties Authority, should keep monitoring the implementation of RPFSSO and consider suitable means to address issues with public concerns (para. 5.6).

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Response from the Government

20. The Secretary for Housing and the Director, Sales of First-hand Residential Properties Authority agree with the audit recommendations.