

S/N 12/2020 – Failure to Explain Refund Policy for Booking Fee, Use Developer’s Reservation Form, and Obtain or Witness Purchaser’s Acknowledgement of Written Advisory Message for Foreign Property

Facts of Case

In May 2018, the Respondent’s estate agent was appointed by a developer to market a foreign property development located in Pattaya, Thailand (the “**Property**”) to prospective purchasers in Singapore.

The Respondent was involved in the marketing of the Property. In closing a sale transaction, the Respondent had to ensure the necessary paperwork was completed, which included the developer’s reservation form (the “**Reservation Form**”) and his estate agent’s advisory note to purchasers (the “**Advisory Note**”). The Reservation Form included a set of ‘Terms and Conditions’ (“**T&Cs**”), which included the following:

- “ 1. Booking fee shall be deemed as deposit payable on the reservation date.*
- 2. Should the Purchaser fail to execute the Agreement to Sell and Purchase and is not paid 25% of the Sale Price **within Fourteen (14) days** from the Reservation Date, the Project Owner shall forfeit the booking fee as liquidated damages whereby the Purchaser shall have no right to claim for compensation whatsoever.”*

In mid-May 2018, X (the “**Purchaser**”) browsed the Internet for foreign property developments and learnt about the Property. The Purchaser was interested to purchase a unit and provided his contact details. Subsequently, the Purchaser received a call from the Respondent, who arranged a meeting with the Purchaser and gave him a presentation on the Property.

The Purchaser decided to purchase a unit in the Property (the “**Unit**”) at the price of 4,826,000 Thai baht dollars (approximately S\$ 208,831.64). The Respondent informed the Purchaser about the payment timelines, which included an upfront booking fee of 100,000 Thai baht dollars (approximately S\$ 4,327.22) (the “**Booking Fee**”). The Respondent proceeded to facilitate the Purchaser’s payment of the Booking Fee. The Respondent did not inform the Purchaser that the Booking Fee was non-refundable upon payment, nor did he provide the Purchaser with any forms to complete. In particular, the Respondent did not provide the Reservation Form or explain the T&Cs contained therein.

Pursuant to paragraph 16 of the Practice Guidelines for Estate Agents and Salespersons Marketing Foreign Properties (“**PG 1/2014**”), the Respondent’s estate

agent was required to provide a written advisory message to consumers, stating that purchasers must conduct due diligence, and drawing their attention that risks are involved for foreign property consumers, and that their transactions are subject to foreign laws and any change in policies and rules in the country where the property is located (the “**Written Advisory Message**”). The Written Advisory Message was set out in the Advisory Note, but the Respondent did not provide the Purchaser with the Advisory Note, nor did he obtain or witness the Purchaser’s acknowledgement of his understanding of the Written Advisory Message.

Subsequently, the Purchaser decided to cancel the purchase and sought a refund of the Booking Fee, but was informed by the Respondent that the Booking Fee was non-refundable. The Respondent tried to find another purchaser to take over the purchase of the Unit, but was unsuccessful. The Respondent then assured the Purchaser that he would refund a sum of S\$ 2,000 to him, but he never transferred any monies to the bank account provided by the Purchaser.

The Purchaser eventually received a refund of S\$ 4,175 from the developer in mid-December 2018. The Respondent’s estate agent and the Respondent did not receive any commission in relation to the Unit’s aborted purchase (although the estate agent would have received 5% of the sale price per unit for a successful sale, while the Respondent would have received 3% of the 5% commission received by the estate agent).

Charges

The Respondent faced the following charges:

Charge 1 (Proceeded)

For failing to perform estate agency work in accordance with applicable laws, by failing to comply with the requirements under paragraph 4(b), Annex B of of PG 1/2014, by failing to explain to the Purchaser the refund policy that would apply to his purchase of the Unit before he committed to the purchase, in particular, the refund policy for the Booking Fee paid when he reserved the Unit (and as set out in the developer’s Reservation Form), in contravention of paragraph 4(1) read with paragraph 4(2)(a) of the Code of Ethics and Professional Client Care (the “**Code**”).

Charge 2

For failing to perform his work with due diligence and care, by failing to use the developer's Reservation Form when the Purchaser purchased the Unit, in contravention of paragraph 5(1) of the Code.

Charge 3

For failing to perform estate agency work in accordance with applicable laws, by failing to comply with the requirements under paragraph 16 of PG 1/2014, by failing to obtain or witness the acknowledgement of the Written Advisory Message provided by his estate agent to the Purchaser, as set out in the Advisory Note, in contravention of paragraph 4(1) read with paragraph 4(2)(a) of the Code.

Outcome

Pursuant to a plea bargain, the Respondent pleaded guilty to Charge 1, while Charges 2 and 3 were taken into consideration for purposes of sentencing.

In sentencing, the Disciplinary Committee (“DC”) noted that the Respondent was guilty of serious omissions of duty imposed on him, as he had completely failed to inform and explain various essential documents to the Purchaser. Instead, the Respondent acted rather cavalierly and hastily to facilitate the booking of the Unit for the Purchaser. The duty to inform and explain payment terms is first in importance in a property sale in general, even if the Purchaser did not ask about it, and the Respondent's failing warranted a significant penalty.

The DC also noted that the Respondent was aware of his mistakes and seemed to regret his omissions.

Accordingly, the DC imposed the following financial penalty and disciplinary order on the Respondent:

Charge 1: A financial penalty of \$ 3,500.

Imposition of a condition on the Respondent's salesperson registration, that the Respondent shall not market or transact in any foreign property for a period of 6 months.

Fixed costs of \$1,000 was also imposed on the Respondent.