

S/N 9/2018 – Failure to Provide Written Advisory Message to Buyers and Explain Dispute Resolution Mechanism for Foreign Properties

Facts of Case

The Respondent, an estate agent, was appointed by a developer in June 2014 to market a foreign property development located in Bangkok, Thailand (the “**Property**”) to prospective purchasers in Singapore and Malaysia.

Unit 424

In July 2014, Purchaser X (“**X**”) attended a seminar conducted by the Respondent to market the Property and was given a presentation on the Property. X decided to purchase a unit (“**Unit 424**”) for the price of 2,509,368 Thai baht dollars. X paid a refundable booking fee and was informed by the Respondent that the Property would be ready by December 2016.

Pursuant to paragraph 16 of the Practice Guidelines for Estate Agents and Salespersons Marketing Foreign Properties (“**PG 1/2014**”), the Respondent was required to provide a written advisory message 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 to any change in the policies and rules in the country where the property is located (the “**Written Advisory Message**”).

The Respondent did not provide X with the Written Advisory Message before he filled in the booking form or paid the booking fee for Unit 424. In fact, there was no Written Advisory Message in the Respondent’s sales kit for the marketing of the Property.

X subsequently signed the Sale and Purchase Agreement for Unit 424 (“**S&P for Unit 424**”) and paid the developer S\$ 32,000 (or 752,810 Thai baht dollars), being 30% of the purchase price. The Respondent did not provide X with the Written Advisory Message before X signed the S&P for Unit 424 or paid the sum of S\$ 32,000.

The S&P for Unit 424 signed by X did not prescribe any dispute resolution mechanism that would apply in the event of a dispute relating to X’s purchase. The Respondent did not explain to X, before or during his signing of the S&P for Unit 424, whether any (and if so, what) dispute resolution mechanism would apply in the event of a dispute relating to his purchase of Unit 424. There was also no explanation by the Respondent on which jurisdiction any such dispute would be resolved under, or that the S&P for Unit 424 did not in fact contain a dispute resolution mechanism or a jurisdiction for dispute resolution.

Thereafter, X travelled twice to Bangkok (in October 2014 and February 2015) and visited the site of the Property. X did not see any construction work in progress and was informed by the developer that construction would begin in April 2015.

In November 2015, X travelled to Bangkok again and learnt that the developer had problems with the authorities in building the Property. Hence, the developer would be abandoning the project and would offer buyers properties in other developments that were under construction instead. X did not accept the other developments offered to him, as the locations were not ideal and he was required to pay more. X requested for a refund, but was told that the developer did not have the money and he would have to wait for 3 to 4 years for a refund.

Upon return to Singapore, X tried to obtain the Respondent's assistance to resolve the matter, but received no help from the Respondent. X did not manage to recover the S\$ 32,000 paid to the developer for Unit 424.

For the sale of Unit 424, the Respondent received a commission of 110,412.19 Thai baht dollars (approximately S\$ 4,335.89).

Unit 615

In August 2014, Purchaser Y ("Y") decided to purchase a unit ("**Unit 615**") for the price of 1,693,975 Thai baht dollars (approximately S\$ 67,000). The Respondent did not provide Y with the Written Advisory Message before he filled in the booking form or paid the booking fee for Unit 615.

Y subsequently signed a Sale and Purchase Agreement for Unit 615 (the "**S&P for Unit 615**") and paid 508,192 Thai baht dollars (approximately S\$ 20,327) to the developer, being 30% of the purchase price. The Respondent did not provide Y with the Written Advisory Message before he signed the S&P for Unit 424 or paid 30% of the purchase price.

After the building of the Property was aborted, the developer offered Y a unit in another development in Bangkok that cost 1,086,000 Thai baht dollars. Y made a top-up of S\$ 5,000 to purchase the new unit in replacement of Unit 615.

For the sale of Unit 615, the Respondent received a commission of 74,534.90 Thai baht dollars (approximately S\$ 2,926.99).

Charges

The Respondent faced the following 3 charges:

Charges 1 and 3 (Proceeded)

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 provide the Written Advisory Message to the following respective buyers who each purchased a unit at the Property through the Respondent, in contravention of paragraph 4(1) read with paragraph 4(2)(a) of the Code of Ethics and Professional Client Care (the “**Code**”):

- (i) X (Charge 1); and
- (ii) Y (Charge 3).

Charge 2

For failing to perform estate agency work in accordance with applicable laws, by failing to comply with the requirements under paragraph 19 of PG 1/2014, by failing to explain to X the dispute resolution mechanism that would apply in the event of a dispute relating to his purchase of Unit 424 through the Respondent, and also failing to inform X of the jurisdiction under which any dispute relating to his purchase would be resolved, 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 Charges 1 and 3, while Charge 2 was taken into consideration for purposes of sentencing.

In sentencing, the Disciplinary Committee (“**DC**”) noted that the Respondent’s obligation to provide the Written Advisory Message was imperative in view of the costly losses that consumers could suffer and the possible changes of policies and laws in a foreign jurisdiction. As the Written Advisory Message was not even prepared by the Respondent in the sales kits for the marketing of the Property, the Respondent should bear primary liability for this failure as a corporate body (rather than the inadvertence of its individual salespersons). The omission held greater significance when it was evident that the Respondent had long-standing experience and prestige in the foreign property market.

Further, the Respondent had an antecedent (S/N 6/2016), although it did not involve breaches of PG 1/2014. The DC also took into account the losses suffered by X and Y, and the lack of assistance rendered to X in his dispute with the developer over the refund of his monies.

The DC also noted the Respondent’s timeous admission of its culpability and the tightening of its procedures to comply with the requirements of PG 1/2014 since the failings.

Further, the DC also took into consideration that Y was a salesperson and part of the Respondent’s marketing team for the Property; he ought to have been aware of the

requirements of paragraph 16 of PG 1/2014 and the specific consequences of the failure to provide the Written Advisory Message. While paragraph 16 of PG 1/2014 did not prescribe separate treatment for different classes of consumers, the DC was mindful that the unique circumstances surrounding Y's role in his purchase of Unit 615 (as salesperson and buyer) ought not to be ignored. The DC felt that the Respondent's liability in Y's case was lower, and the financial penalties for the 1st and 3rd Charge should be different.

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

Charge 1: A financial penalty of \$ 7,500.

Charge 3: A financial penalty of \$ 5,000.

Imposition of a condition on the Respondent's licence, 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.