

Promises, promises

> Vital consideration points to avoid being short-changed by misleading real estate brochures



BUYERS often realise to their own chagrin, that there are two sides to a coin. Often, even a third side. Juxtaposing the hyperbole, touched-up visuals of real estate brochures and heavily embellished show units, against the fundamental reality of what buyers actually end up with - *theSun* examines home buyers' expectations and reiterates the "Caveat Emptor" principle.

EXPECTATIONS VS REALITY

Siva Shanker is the president of the Malaysian Institute of Estate Agents. He deals mostly with property agents and industry personnel related to the secondary market and sub-sales (property sold by owners and agents). At times, even with those who work with developers directly. "Unfortunately, we are marketing people, not the quality-controllers. It is easy to blame the salesman instead of the 'manufacturer' per se, as property buyers and investors normally deal with the sales guy, the agent or the developer's staff," Shanker says.

An owner of property himself, Shanker agrees that some developers have gone overboard in over-hyping their sales brochures and marketing material. He also commends the many developers who have produced great work across their property development portfolios. "Some come up with good work across all their projects and then suddenly they produce one slipshod job. Maybe they accidentally used the 'wrong' contractor or building supplier - there could be many reasons."

Then again, looking at the amount of effort some developers have invested in their marketing strategies, Shanker complains, "...if only these developers put as much effort into the building as they did into producing a brochure, then perhaps

we will have better quality structures!" He elaborates on the whole ritual of a property launch, including "garnishing" of the marketing and sales materials, especially brochures and show units. Embellishment of showroom units and elaborate launch events attract awestruck potential buyers/investors. Often precipitating unnecessarily high expectations and dreams.

ASK, INQUIRE AND PROBE

"I agree that if a developer has the capacity to put up such a great 'show', he should look into the details of his development project and deliver what was stated in the brochure. But from the marketing point of view, I can possibly note what the developer is attempting ... because whatever you're selling, you're bound to 'dress it up' before you sell it, to obtain the best deal and to secure the sale."

Nevertheless, Shanker agrees that the developer has to produce that which he had promised. "You really do not have to scrutinise the S&P agreement as it is a stock standard document. What you need to look at closely and in detail at are the attached documents like the building plans. Carefully examine the attachments first and don't complain later. When attending a launch, look carefully at the finer points and the fine print. Open your eyes wide, ask questions no matter how illogical they may sound. Clear all doubts whatsoever. Query and question the developer to understand what you are

actually purchasing." **Punctiliously examine the small clauses and disclaimers!**

From the legal aspect, Low & Partners managing partner Andy Low Hann Yong informs, "It is not easy to claim against a developer for 'discrepancies' (found in the brochure compared to the 'end-product') due to fine printed disclaimers and exclusion clauses. The home buyer will have a stronger case if the misrepresentation is material and part of the contract signed. For example, building material used is inconsistent when compared to the specification in the S&P agreement." Low adds that there have been cases where the court ruled in favour of the purchaser (ref Cheong Bee Yong v MBF Finance Bhd & Anor [2001] 1 CLJ 668). "The court held that the brochure was worded in such a way that it must be regarded as an 'undertaking' for the developer to pay whatever expenses that arose before the issuance of the CF (Certificate of Fitness) as the purchaser had relied on the brochure to purchase the unit."

With legal action proving expensive and time consuming, Low advises that purchasers contact other similarly misled purchasers in combining their legal efforts and sharing the costs. "Home buyers can also collect evidence including brochures, written letters from developers, and seek independent legal advice."

THE BUYER'S MIND

Shanker details the usual thought process of the typical regular buyer. "This person goes into a property showroom, has a look, goes next door to check out the bare unit. In his mind, he believes he can transform the bare unit into the fitted-out showroom...at a fraction of the cost. Perhaps the developer has given him an 'impression', which influences the buyer to believe it. I can tell you that it can never be done. Unless

you are prepared to spend a huge sum, and I mean a lot of money, you will never get the same thing which you saw in the embellished showroom."

The problem is enhanced through the buyer's unrealistic expectations. "People should know that the artist's impression, images, layout plans and blueprints may not necessarily reflect reality." Show units are consciously 'dressed-up' to awe. One should take note of the empty-shell units with wires hanging out, usually erected next door, to gauge what the buyer will actually be receiving.

"The developer often spends a million plus ringgit to embellish the showroom. He then leverages this investment to sell another 200 units to generate substantial profit. While buying a one million ringgit apartment, buyers often forget they will need another million to embellish the interior."

In short: The real falls short of the ideal because the average buyer cannot afford/invest the additional amount to embellish and achieve that dream interior. One should stop comparing the showroom with the empty-shell after purchase.

COMMON SENSE

Have you ever wondered why some people purchase property, then demolish everything in it (sometimes even the structure), only to re-build it again? Why buy a brand new house, one which the developer has taken pains in constructing, designing and decorating? "If I were the developer, I would just produce an empty shell with infrastructure and basics; bare cement floors, unpainted walls, plumbing without accessories and fixtures, wires ready to be connected etc. - so buyers can kit-out the home the way they want to. This way, prices can be reduced as developers would not have to waste money on fittings and accessories, only to have them demolished. You can also help save the environment by using less materials."

Suggestions by Andy Low:

- ▶ increase awareness among buyers against developers marketing ploys and gimmicks
- ▶ be aware of the difference between "approved plan" and "proposed plan"
- ▶ do not sign the S&P agreement or pay a booking fee without verifying the approved layout plan and building plan. Match the "approved plan" with the artist's impression printed in the brochures
- ▶ verify the common facilities attached in the schedule in the S&P agreement
- ▶ seek independent legal advice from a non-developer's panel lawyer before signing the S&P agreement

The Latin phrase **Caveat Emptor** becomes relevant during property purchase. The meaning "let the buyer beware" places the burden on buyers to reasonably examine property before purchase, and take responsibility for its condition. It is based on the principle that the seller of a product cannot be held responsible for the quality unless it is guaranteed in a warranty.

▶ Please email your feedback and queries to: propertyqs@thesundaily.com

HOUSING DEVELOPMENT (CONTROL AND LICENSING) REGULATIONS 1989

PU(A) 58/1989 (Ref - [http://www.hba.org.my/laws/housing_reg/1989/PU\(A\) 58-1989](http://www.hba.org.my/laws/housing_reg/1989/PU(A) 58-1989))

Sec 5: Advertisement and sale permit.

- (1) No advertisement or sale shall be made by any licensed housing developer without an advertisement and sale permit having first been obtained from the Controller.
 - (1A) Any advertisement and sale shall be in accordance with the advertisement and sale permit as approved by the Controller.
- (2) An applicant for an advertisement and sale permit shall submit his application in the form prescribed in Schedule D and shall supply the following:
 - (a) a copy of the approved building plans;
 - (b) two copies of the proposed advertisement including the brochure containing particulars as prescribed under paragraph (1) of regulation 6 of these Regulations; and
 - (c) such other relevant particulars or information as may be required by the Controller.
- (3) Any misleading statement, false representation or description of the particulars or information required under paragraph (2) of this regulation shall be an offence under these Regulations.
- (4) The Controller may, in his discretion, grant an advertisement and sale permit with or without attaching any condition or conditions thereto or refuse to grant a permit. An advertisement and sale permit issued under this regulation shall be in the form prescribed in Schedule E.
- (5) No advertisement and sale permit shall be issued nor shall any advertisement or sale be made for any housing development in respect of which-
 - (a) the licensed housing developer is not the proprietor of the land upon which the housing development is proposed to be carried out;

Provided that this provision shall not apply if the proprietor of such land has executed an agreement with the licensed housing developer to the effect that-

 - (i) the proprietor agrees to the sale of the land for the purpose of the housing development concerned; and
 - (ii) the proprietor agrees to abide by the provisions of regulation 10 of these Regulations;
 - (b) the land upon which the housing development is proposed to be carried out is charged for an amount exceeding fifty per centum (50%) of the market value of the land (inclusive of annual interest on such amount) and such charge is to any person, body or persons, company, firm or society other than a bank which is in possession of a licence issued under the Banking and Financial

Institutions Act 1989 [Act 372], the Islamic Banking Act 1983 [Act 276], the Bank Simpanan Nasional Berhad Act 1997 [Act 571], the Bank Kerjasama Rakyat Malaysia Berhad Act 1978 [Act 202] or the Bank Pertanian Malaysia Act 1969 [Act 9];

- (6) An advertisement and sale permit shall be required in respect of each housing development and any advertisement in relation to the same development, which differs from that for which the permit was first granted, may be made but subject to such variation being submitted for the prior approval of the Controller.
- (7) The fee payable for a permit under this regulation shall be five hundred ringgit per year or part of a year.

Sec 6: Particulars to be included in advertisement.

- (1) Any advertisement (other than those conveyed by means of broadcast sound receivers or through television receivers) made by any licensed housing developer shall include the following particulars:
 - (a) the housing developer's licence number and validity date;
 - (b) the advertisement and sale permit number and validity date;
 - (c) the name and address of the licensed housing developer and his authorised agent, power of attorney holder or project management company if any, as approved by the Controller;
 - (d) the tenure of the land if the land is leasehold, its expiry date and encumbrances, if any, to which the land is subject;
 - (e) the description of the proposed housing accommodation;
 - (f) the name of the housing development, if any;
 - (g) the expected date of completion of the proposed housing development;
 - (h) the selling price of each type of housing accommodation;
 - (i) the number of units of each type available; and
 - (j) the name of the Appropriate Authority approving the building plans and the reference number.
- (2) A licensed housing developer shall issue a brochure in respect of the housing accommodation to each purchaser free of charge.

Refer to and/or register complaints with:

- National House Buyers Association - www.hba.org.my/
- Ministry of Urban Wellbeing, Housing and Local Government - www.kpkt.gov.my/
- The Advertising Standards Authority (ASA) of Malaysia - www.asa.org.my/

CUT AND KEEP