

Housing Department failing to inform complainant that some pipeworks of his flat were located at the flat below such that he had not requested related pre-sale maintenance before he purchased the flat under the Tenants Purchase Scheme

Investigation Report

The Complaint

The complainant, previously a public rental housing (“PRH”) tenant, purchased his PRH flat under the Tenants Purchase Scheme (“TPS”) in 2014. Before sealing the deal, he had been offered “pre-sale maintenance” service by the Housing Department (“HD”). Not knowing that some pipeworks of the flat were located at the flat below, he had not asked HD to examine and repair them. Several years later, those pipes began to leak and affected the flat below. The complainant, as owner, had to take up the repair responsibility. Aggrieved at HD’s failure to inform him of the location of the pipeworks before the purchase such that he could not ask for related “pre-sale maintenance”, he lodged a complaint with this Office in June 2019.

Our Findings

TPS and Pre-sale Maintenance

2. Under the TPS implemented by the Hong Kong Housing Authority (“HKHA”) in 1998, PRH tenants can purchase the flat they have been renting at a discount. The Agreement for Sale and Purchase states that the flats are sold on an “as is” basis. With caring as one of its core values, HKHA provides the so-called “pre-sale maintenance” to remind buyers that they can request the owner (i.e. HKHA) to repair damaged in-flat facilities before they formally become its owner. For this purpose, HD (as HKHA’s executive arm) would invite tenants to submit a “final return on items for in-flat maintenance” (“Final Return”), then arrange for inspection and repair of the damaged facilities as listed in the Final Return. HKHA’s repair and maintenance responsibility with respect to the flat and the facilities for its exclusive use would cease when the tenant becomes the owner.

Course of Events

3. The flat involved was allocated to the complainant's family in April 2013 upon repair and refurbishment. In December, the family completed the intake formalities and went to inspect the flat, then reported the repair items (including the floor drain outlet of the bathroom) to HD. In February 2014, the complainant submitted the Letter of Offer and the Final Return under the TPS. It was stated in the Final Return that they had reported the repair items to HD earlier.

4. On 20 February, HD's contractor inspected the flat and confirmed blockage of the floor drain outlet of the bathroom, which then functioned properly again after desilting. On 6 March, the contractor completed the repair of the remaining items. On 17 April, the complainant completed the formalities for purchasing the flat.

5. In December 2018, the complainant contacted the management company of the PRH estate with respect to a complaint by the owner of the flat below, and was told that as owner, he had to take up the repair responsibility for the leaking pipes.

HD's Comments

6. HD indicated that some facilities for the exclusive use of a flat may be located outside of the flat. For example, gas pipes may be installed on the external wall of a building, cable wires and fresh water pipes may be installed along the corridor or concealed inside the walls of the flat, and floor drain outlets may also run through the flat below before connecting to the main pipe. This is common architectural design among public/private residential buildings, in no way unique to the PRH estate involved.

7. As the flat was sold on an "as is" basis, the seller was under no legal obligation to inform the buyer of the locations of exterior facilities which are for the exclusive use of the flat. The buyer should take action to check the condition of the flat and examine whether its related facilities were in order. If in doubt, the buyer can make enquiries with the seller or consult professionals. According to the Agreement for Sale and Purchase, HKHA would not provide any guarantee or make any statement concerning the actual condition of the flat, but would answer honestly all enquiries of the buyer.

8. Besides, the floor drain outlet in question had all along been functioning properly. So, even if the complainant had made a request for replacement before purchasing the flat, HD would not have replaced a normal, unclogged pipe. That the pipe became problematic four years after purchase was a result of normal wear and tear.

Our Comments

9. We agreed it to be common architectural design that some facilities for the exclusive use of a flat are located outside of the flat. Sale and purchase of properties adopt the principle of *caveat emptor* (which means “buyers beware”). Just like any private property owner, HKHA is not legally obligated to take the initiative to inform buyers about the condition of exterior facilities which are for the exclusive use of a flat. It only needs to answer buyers’ questions honestly. Buyers should take action to check the condition of the flat they wish to purchase and examine its related facilities, and understand all sorts of repair and maintenance responsibilities they are going to take up as owner. They should also ask for information and seek professional opinions where warranted. Purchase decisions should only be made after very careful and thorough consideration.

10. HKHA, out of good will, let buyers report items in need of pre-sale maintenance (see **para. 2**) to make sure that the facilities in the flat to be sold are in good repair. This does not violate the principle of *caveat emptor*. Anyway, the onus of repairing the pipes that began to leak four years after purchase rested with the incumbent owner. This was in fact reasonable.

Conclusion

11. Overall, The Ombudsman considered this complaint **unsubstantiated**.

Office of The Ombudsman
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