

# Executive condominiums (EC): Special considerations for developers

March 1, 2014

The EC scheme was launched in the mid-1990s to provide Singaporeans "private housing at a lower cost"<sup>1</sup> and to create a new housing scheme for a "sandwich class" of young professionals who exceeded HDB's income ceiling but who could not afford private property due to the sharp increases in private property prices.<sup>2</sup>

In 2010, the Singapore Government released EC sites for development. This marked the end of a five-year hiatus as the last launch of an EC project took place in 2005 (La Casa).

This article examines the unique key features of EC projects which are increasingly popular, and also sets out some special considerations that a developer may wish to take into account in developing EC sites.

## Key features of EC projects for developers

### Who builds them?

Unlike HDB flats, EC projects are developed and built by developers from the private sector. EC projects are strata-titled apartments built by private developers with facilities and finishes.

### Housing developer's licence

Like other private housing developments under construction, the developer of an EC project has to obtain a housing developer's licence under the Housing Developers (Control and Licensing) Act.

### Documentation

The option to purchase (Option) and sale & purchase agreement (SPA) for the purchase of EC units are regulated and are prescribed by the Executive Condominium Housing Scheme Act (ECHS Act). Essentially, the documents are similar to some extent with the prescribed form of Option and SPA under the housing developers' rules. Any variation to the Option and SPA, as well as any side letters which vary the terms of the documents, would require consent from the Minister.

### Additional buyers' stamp duty (ABSD)

ABSD is chargeable for a developer's acquisition of land for development of an EC project. A licensed developer will have to apply for upfront ABSD remission to IRAS in order to be eligible for remission.

### Project completion period (PCP)

Presently, the PCP for typical sites sold by the Government is 60 months from the date of purchase. However, at

present, for EC developments, the PCP is typically 48 months from the date of purchase.

## Special restrictions on development

In December 2012, the Government imposed two measures to prohibit the building of “super-sized ECs”. First, the Government imposed a maximum of 160 square metres of the strata area for each EC unit. Second, the Government will regard private enclosed spaces (PES) and roof terraces (RT) as gross floor area (GFA), which will be subject to a development charge or differential premium. Prior to that measure, PES and RT were not computed as GFA.

## When to sell

With effect from 12 January 2013, developers will only be allowed to launch units for sale 15 months from the date of award of the EC site, or after physical completion of foundation works, whichever is earlier. The purpose of this measure is to help moderate EC land bids<sup>3</sup>

# Key features of EC projects for buyers and developers

## Additional buyers' stamp duty (ABSD)

ABSD is automatically remitted on the purchase of a new EC unit where the sole owner or one of the co-owners of the EC unit is a Singapore citizen. Where the purchaser of a new EC unit is a Singapore permanent resident, ABSD of 5% is payable.

## Eligibility requirements

To purchase an EC unit, potential buyers (also called “applicants”) have to meet certain eligibility conditions similar to those for HDB flats relating to citizenship, income ceiling, family nucleus and non-ownership of private property. At present, the average gross monthly household income of the family nucleus must not exceed \$12,000.

- Prior to the developer serving the notice of vacant possession on the various purchasers, the developer will have to assess the purchasers' eligibility afresh to ascertain whether or not they are still eligible to continue with the purchase of the EC unit.
- Unless special approval of the Minister is obtained, the EC unit cannot be sold during the minimum occupation period (MOP), which commences from the date of the issuance of the temporary occupation permit for the EC Project and expires five years after. Further, the occupiers who are essential in the forming of a family nucleus in the application for the purchase of the EC must continue to be listed in the application and stay in the EC unit during the MOP.

## Sub-sales

As we will elaborate more below, purchasers of EC units are not allowed to sub-sell or assign their interest in their EC units, unless the approval of the Minister is obtained.

## Availability of loans

As with other private properties, HDB does not provide loans or mortgages for EC units.

- Mortgage Servicing Ratio (MSR): On 9 December 2013, the HDB announced that a 30% MSR cap will apply to purchases of EC units where the Option is granted on or after 10 December 2013.
- In that regard, MAS's Notice 645 (revised 9 December 2013) provides (among others) that a bank shall not grant any credit facility for the purchase of an EC unit purchased directly from a developer where the aggregate monthly instalments for the credit facility exceeds 30% of the borrower's gross monthly income. Where there are two or more borrowers, the cap is 30% of the borrowers' gross monthly income.
- Prior to this announcement, EC purchases were only subject to the total debt servicing ratio (TDSR) rules, under which up to 60% of household income can be used to repay a mortgage for a new home purchase, over a maximum period of 30 years.
- After the announcement of 9 December 2013, both MSR rules and TDSR rules apply to the purchase of EC units.

## Sale restriction periods

For the first five to 10 years, EC projects are governed by some restrictions.

- During the MOP, EC purchasers are governed by restrictions similar to HDB flats, e.g. the EC purchasers are not allowed to own private property or to sell their EC units.
- Between the commencement of the 6th year to the 10th year after the issuance of the TOP, EC purchasers will be able to sell their EC units (to Singapore citizens or Singapore permanent residents) or purchase other private properties. During this period, EC purchasers are not allowed to sell their EC units to foreigners.
- After the 10th year, the restriction prohibiting the sale of EC units to foreigners will no longer apply, and EC units will have the same status as private condominiums, i.e. they can be sold freely on the open market.

## Termination of the SPA due to ineligibility

As mentioned earlier, prior to the service of the notice of vacant possession, the developer will have to assess the purchasers' eligibility afresh to ascertain whether or not they are eligible to continue with the purchase of the EC unit.

Where fiancé-fiancée family nuclei are concerned, under HDB's regulations, the marriage certificate must be submitted to the developer.

What happens when a purchaser becomes ineligible to continue with the purchase of the EC unit (e.g. if the fiancé-fiancée family nuclei fails to produce their marriage certificate)?

Under the prescribed form of agreement, if a purchaser is ineligible to continue with the purchase of the EC unit, the developer is entitled to terminate the agreement, subject to certain requirements of the relevant authorities. In addition, depending on the date the land was launched for sale by the State, the developer may also be entitled to forfeit 5% or 20% of the purchase price of the EC unit.

**Date the land was launched for sale by the State**

**Amount the developer may forfeit**

Before 9 December 2013

20% of the purchase price of the unit

On or after 9 December 2013

5% of the purchase price of the unit

Given the potential financial exposure, at the point of purchase, purchasers of EC units must therefore take the issue of eligibility seriously as this is a continuing obligation on the purchasers' part. Purchasers must also take note that if they no longer wish to proceed to purchase the unit, it is also not an option to sub-sell the unit in the open market during the restriction periods. It is also not an option for the purchasers to return the unit to the developer.

## Conclusion

In view of the special nature and various considerations unique to EC projects, such as eligibility requirements, the developer of an EC project would have to be prepared to assist with the assessment of the purchasers' eligibility over a certain period of time, as the purchasers have to meet (and continue to meet) eligibility conditions to continue their acquisition of the EC unit.

So, while it may be attractive to a developer to embark on an EC project, it is also important to note the various requirements where the consent of the relevant authorities is required for certain decisions or actions to be undertaken by the developer. It remains very much a partnership between the developer and the relevant authorities to work together to manage an EC project which is regulated in several ways. As such, it is essential for developers to understand the considerations for such projects to avoid pitfalls.

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### References

<sup>1</sup>Executive Condominiums (HDB-type financing for first-time house owners); (1995, September 27), Vol. 64, cols 1509-1510.

<sup>2</sup> Executive Condominium Housing Scheme Bill; (1996, February 27), Vol. 65, cols 732-735.

<sup>3</sup> Reviewing Rationale for Executive Condominiums; (2013, January 14), Vol. 90.

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