

Penyeh Construction and Longyi Advertising

1606th Commissioners' Meeting (2022)

Case: Penyeh Construction and Longyi Advertising violated the Fair Trade Law by marketing Penyeh Haoyang presale homes

Keyword(s): Presale home, deposit, agreement viewing

Reference: Fair Trade Commission Decision of July 6, 2022 (the 1606th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 111054

Industry: Real Estate Development Activities (6700), Real Estate Agencies Activities (6812)

Relevant Law: Article 25 of the Fair Trade Law

Summary:

1. An informer complained that Penyeh Construction Co., Ltd. (hereinafter referred to as Penyeh Construction) and Longyi Advertising Co., Ltd. (hereinafter referred to as Longyi Advertising) requested homebuyers to pay a deposit before they could read the purchase agreement when marketing the Penyeh Haoyang presale homes. The practice was in violation of Article 25 of the Fair Trade Law.
2. Findings of the FTC after investigation:
 - (1) To understand the actual marketing process of the presale homes in concern, the FTC sent its staff members to visit the reception center as consumers and ask whether they could have the purchase agreement and take it home to read. The salesperson replied that consumers could only read the agreement at the reception center. The FTC staff members requested again to take the agreement home to read. The answer was that consumers normally would not make such a request when checking the units the first time. Usually, the agreement would be provided only after both sides made further discussions and price negotiations or after consumers have paid their deposits. In addition, the salesperson told the FTC staff members that they could take the agreement home to read if they paid a deposit of NT\$100,000.
 - (2) The FTC's investigation showed that Penyeh Construction built the Penyeh Haoyang presale homes and delegated Longyi

Advertising to market the units. Since both companies would profit from the sales as stipulated in the contract, they were both actors in this case.

- (3) During the investigation, Penyeh Construction and Longyi Advertising first denied that the salespeople had requested homebuyers to pay a deposit or a certain amount of money before they could take the purchase agreement home to read. When a salesperson surnamed Lin gave his statement at the FTC and the two companies had a talk with him, they found out Mr. Lin had indeed told consumers that normally salespeople would provide the purchase agreement for them to take home to read after they expressed the intention to buy and paid a deposit. Mr. Lin stated he did not mean consumers could take the agreement home to read only after paying a deposit. However, paying a deposit and taking the agreement home to read were two different matters. In addition, he did tell the FTC staff members that they could take the agreement back to read if they were willing to put down a deposit of NT\$100,000. It was unquestionable that he did refuse to give the presale home purchase agreement for prospective homebuyers not paying a deposit to take the agreement home to read. The practice was obviously unfair conduct of taking advantage of information asymmetry and improperly restricting consumers from taking the agreement home to read.

3. Grounds for disposition:

- (1) Different from transactions of normal consumer products, presale home purchases involved large amounts of money and great risks. The Ministry of the Interior had issued standardized contracts to protect the interests of consumers. Homebuyers were in a disadvantaged position as far as information was concerned. At the same time, leaving a deposit entailed risks. Enterprises collecting deposits before allowing consumers to take the agreement home to read obstructed consumers from making correct transaction decisions. In addition, there were 70 presale homes in this case. Combining the statement from the informer and the results of investigation, the FTC found it hard to consider it was an individual or non-recurring transaction incident. Restricting homebuyers from taking the purchase agreement home to read was obviously unfair conduct. The practice would have an impact on homebuyers who had already signed the agreement and potential trading counterparts. Affected victims in

this case could be many. Penyeh Construction and Longyi Advertising asserted that the deposits could be returned. Nevertheless, collecting deposits to gain opportunities of transaction was likely to create unfair competition and law-abiding competitors in the market would lose opportunities to make fair transactions. The practice was able to have an effect on market competition order on price and quality, both are the core of market competition. It was in violation of Article 25 of the Fair Trade Law.

- (2) After assessing the duration of the unlawful act, the sales of the two companies, the income from already sold presale homes, the level of cooperativeness during the investigation and the violation being the first, the FTC imposed an administrative fine of NT\$700,000 on Penyeh Construction and NT\$350,000 on Longyi Advertising.

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