

Nothing is impossible in China, you also think so?

Description

It has been in place for some years from 2006 when China central government imposed restrictions on foreign individual or legal entities in buying properties in China, an move taken to rein in the then out of control price hike. This restriction is further reinforced in 2010 to the effect that each foreigner can only “buy” one piece of residential property.

As the restriction policy is handed down from top central government, it should be assumed that all localities throughout China shall enforce the rules. So far as I know, the policy is well enforced when the Shanghai real estate market is white-hot. But it is often not the case when the local real estate market is not active.

In the past two years, with the central government’s resolute measures to cool down the property market in China, Shanghai’s local property market has seen sharp plummet in transaction volume and is right now at a standstill with interested parties waiting for the other to concede. This situation has a direct and profound impact on local government revenue, which often holds local government back from enforcing central government policies.

Just recently, I was entrusted to help a foreign individual to purchase a residential property in Shanghai. The client wanted to purchase a luxury apartment in central downtown Shanghai. But according to the central restriction policy, only foreigners who works or learns in China for a term of more than one (1) year can be allowed to purchase residential property for personal use according to their actual needs, and as mentioned above, the policy was later made clear that any foreigner shall only buy one residential property.

The facts about the client: he has never worked in Shanghai, and is right now enrolled in a university in another city on his student visa. Apparently, the client is not qualified for purchasing property in Shanghai. But wait a minute. The central government policy is not air-tight, and it leaves ample rooms for local government to undermine or frustrate its intended purpose.

(1) “works for more than one year” versus “have worked for more than one year”

First of all, in the central restriction policy, the one year working or learning time period requirement can be interpreted in two ways that result in dramatically different outcomes.

In the stringent, probably the purported, interpretation, it means that the foreigner buyer should have worked in China for at least one year before being entitled to buy. However, literally interpreted from the wording, it can also mean that a foreigner that just secures in China an employment contract or school enrollment of a term of more than one year is also entitled to buy. The latter relaxed interpretation will entitle a lot more foreigners buy properties in China.

Back in 2009, I helped a German client in purchasing a villa in Shanghai. Indeed, we just submitted a

newly signed contract with a term of two years to bank and local government, and it worked without proving the buyer had worked for more than one year.

(2) “with work permit” versus “without work permit”

Even in the case of stricter interpretation of the restriction rules, how to prove or evidences required to prove the one year time period can vary, leading to different results.

If the local government is serious about the one year working and learning period, it may require the buyer to present the Alien Work Permit issued by local labor department to him, and even require him to submit his or her tax records which are supposed to exist in relation to his employment. Such strict requirements can virtually weed out any fake buyer and well attain the curbing effect of the policy.

On the other hand, since the central policy does not require submission of those work permit and tax records but an employment contract only, local governments may take advantage of this loophole to allow more foreigners to buy local properties. The point is that without work permit and tax records, it is easy for any foreigner to obtain an employment contract at some tiny cost, I mean, a fake employment contract.

Not much to my surprise, my latest inquiry into the real estate transaction centre in the district where my client is going to buy property illicited a reply that they won't request more evidences than a simple employment contract to prove the one year time period, though they insisted that the one year period is the time period that has lapsed before purchasing property. Well, that probably means the foreigner will have to backdate his or her employment contract with some other auxiliary surpportive evidences. No big deal.

(3) possible to buy property in a different city?

Foreigners often asked whether it is possible to buy a property in a city where they are not working or learning? For instance, will a foreigner working in Beijing be allowed to buy a residential property in Shanghai?

Based on the central restriction rules, one will reasonably infer that it is not possible because in that case it is hard for the buyer to convince real estate officials that the property is bought for self-use purpose. This is most likely true.

Notwithstanding that, in 2010, a client of mine who worked in Hangzhou city managed to buy an apartment in Chongqing in the face of central restriction rules.

So, you may also come to realize, as said by another client, that “nothing is impossible in China”.

Date Created

May 2012

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