

New condos cut corners

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New development condos, places where many buyers once turned a blind eye to problems, are now emerging as a breeding ground for litigation over everything from misrepresentation to shoddy construction to unpaid vendors.

When prices were escalating, buyers seldom complained if their views weren't as spectacular as they had been promised or if the floors buckled. The current downturn, however, is now revealing a plethora of ongoing bad behavior at new developments — problems that, as money runs tight, are getting worse. Meanwhile, unhappy buyers or stiffed vendors are much more likely to sue.

"In a bad market, a lot more emphasis is put on honesty," said Jonathan Phillips, a senior vice president at Halstead Property. "People are very concerned about not being cheated."

During the boom, it was common for developers and their brokers to make wild claims about how quickly their splashy new condos sold out and the astronomical prices wealthy buyers paid for penthouses. But these claims weren't always accurate, said Phillips.

"In every boom, the developer does a pas de deux with accuracy," Phillips said. "If anyone goes back and looks at the rate that sellouts were perceived to occur and when those sellouts were registered [with the city], they're often a world apart."

These kinds of exaggerations were viewed as somewhat innocuous when a building's rapid sellout was viewed as a virtual certainty.

"I don't think [honesty] is what a lot of people thought about first in a boom market," Phillips said. "They thought about momentum. If the building was sought-after and everyone wanted it, they would be able to sell it faster and for more money."

That has changed now that sales of new construction condos have slowed drastically. In the current environment, banks often refuse to write mortgages in buildings that are less than half, or even 70 percent, sold out. That means that a slight exaggeration of the units sold, previously viewed as no big deal, can now torpedo a deal by preventing a buyer from getting financing. But misrepresenting the number of units will likely backfire, said Phillips.

"You will see [the situation at these developments] blow up left and right, and they have, over the past year," Phillips said. "Banks are going to verify through their underwriting how many units have been sold."

At Financial District condominium 20 Pine, developer Shaya Boymelgreen and marketer Michael Shvo are facing a lawsuit from a buyer alleging that they falsely claimed that 140 of the building's 409 residential units were "already in 'hard' contract with bona fide purchasers," were false, according to the suit, which is ongoing.

Luigi Rosabianca, principal attorney and founder of real estate law firm Rosabianca & Associates, said he's dealing with several lawsuits where buyers were told that a certain percentage of units had been sold in a building, only to later find out that it wasn't true.

When brokers tell a buyer that a certain percentage of units are sold, "the [buyer is] emboldened by that," Rosabianca said. "People think, 'I can get a loan, no problem.'"

John Serpico, a real estate attorney at Brooklyn law firm Serpico, Serpico & Siddiqui, said he is aware of one case where a buyer was told by a broker that a condo building was 70 percent sold, only to find out at closing that only 40 percent of the units had been purchased.

As a building moves from floorplans to framing, there are even more opportunities for rancor between buyer and seller. With many developers short on cash, buyers are complaining of substandard materials and craftsmanship. They are also saying that developers are not completing projects on time or not finishing construction at all.

Adam Leitman Bailey, a real estate attorney who is representing disgruntled buyers at the Brompton, Manhattan House and other new development projects in the city, said the combination of high land prices and the recent construction boom has, in some cases, resulted in shoddy construction.

"These developers paid a really high price for these properties," Bailey said. "In order to make money, they have to cut corners somewhere, so they don't build well."

At the Brompton, for example, a group of buyers have sued recently in an attempt to get out of their contracts.

One of them, Dave Hsu, the purchaser of Unit 6K, sued the developer, the Related Companies, in May, claiming "an inordinate delay in completing construction of the condominium without material defects"

and "fraudulent and/or negligent misrepresentation" of the building's access to a nearby Equinox Fitness Club. The case is ongoing.

Rosabianca said some recent lawsuits have more to do with buyers' desire to get out of their contracts than problems with the building. However, he said, "people definitely cut corners in this market," adding: "When you cut corners, you end up sacrificing quantity for quality."

For example, he said, buyers are complaining that small "punch-list" items now take longer to get finished, in part because they are no longer at the top of many cash-strapped developers' priority lists.

Sometimes the construction problems extend far beyond punch-list items.

Bailey's firm is representing the board of managers in one Midtown West building where buyers claim there are more than \$6 million in problems with the building, ranging from issues with the roof, bathrooms, showers, common areas, flooring and mechanicals.

The developer, who has several other projects in New York, "ran out of money," Bailey said. "The contractor won't do the work because the sponsor hasn't paid them."

Contractors aren't the only ones not getting paid.

Lawsuits have been popping up all over the city with vendors — such as public relations firms and accountants — claiming that developers have skimmed on their payments. The Alexico Group is facing litigation after it failed to pay \$254,000 in back rent for a sales office at Upper East Side condominium the Laurel.

Another lawsuit filed by Brant Publications claimed that the developer owes them for \$65,000 worth of ads in Interview and Art in America magazines.

At Arris Lofts in Long Island City, a suit filed in February by media buying firm Renegade alleges that the developer, the Andalex Group, has not paid for \$170,000 worth of newspaper advertisements Renegade placed on the developer's behalf.

"If you're involved in real estate, many things are transaction-oriented," said Gary Rosenberg, a founding partner at law firm Rosenberg & Estis. "Very often, you work on deals where the closing is when everything gets paid — and if there is no closing, then you're not paid as fast."

While payment disputes arise in good times, too, they were less likely to end in court when times are flush, Rosenberg said.

"It's much easier to come to a resolution when you made money on a deal," he said. "It's a lot more difficult when you're not talking about how much you're going to make; it's how much you're going to lose. It's a tough conversation."

He emphasized that most developers very much want to pay their vendors, but in this environment, some simply can't.

"Developers aren't looking to not pay people," he said. "You may really want to write that check, but you don't have [the money] to write [it]."