

Defining "sold" at the Trump Soho

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Did a lapsus linguae really lead to Trump Soho legal woes?

"Sold" means "sold" -- except when it doesn't. That's the argument behind a new lawsuit involving the Trump Soho.

The condo-hotel development, which has endured fickle buyers, community backlash and an unforgiving sales market, now faces a lawsuit that brings one central question to light: What does "sold" really mean?

The suit, filed Aug. 2 in U.S. District Court, pits 15 buyers against Trump Soho developers and marketers, both past and present. The plaintiffs claim that the Trump Soho team misled them in the press -- and in person -- by reporting inflated sales figures, which they say lowered the value of their investments.

The plaintiffs are backing up their claims by pointing to an amendment to declare the condo-hotel development's offering plan effective, filed with the attorney general's office this spring. The amendment was filed with 15 percent of the building's 391 units in contract. So, if there were 50 percent or more units "sold" (as the buyers say was reported in the press), the plaintiffs ask: "Why weren't they included in the amendment?"

At issue is when a unit is "sold" -- a difficult question to answer with new developments, as a buyer may execute a contract and then make more than one deposit during the time -- often years -- before the unit is available for a closing.

"That term gets used or misused all the time," added Jeffrey Schwartz, a real estate attorney and partner with Wolf Haldenstein Adler Freeman & Herz, who is not involved with Trump Soho. "[Agents] say, 'Well, we have X percent sold.' Well, that may not really be 'sold.' ... People hear 'contracted for,' they hear 'closed' or 'sold,' and it may not be that precise."

John Serpico, principal at Serpico Serpico & Siddiqui, said that agents at many new developments often will tread this tightrope. (Serpico is also not involved with Trump Soho.) "I don't think [agents are] doing anything wrong, but I think they're hyping it," Serpico said. "It's a white lie: 'We sent out [X number] of contracts, so we've got these deals.'"

Trump Soho is hardly the first development to be questioned on the discrepancy between its sales claims and its legal filings. Home builder Toll Brothers, for example, sent out a press release early last month saying it was 60 percent sold on its new 128-unit building at 303 East 33rd Street, but Curbed noted that just 10 units had closed -- according to public records -- at the time. (StreetEasy said more than two dozen units had closed as of the end of last month.)

John Gullixson, a project manager at the Toll building, said this is another example of how different interpretations of "sold" can lead to confusion. While public records will show how

many units have closed, there can be far more units with fully executed contracts -- something that constitutes a sale in the eyes of the developers and the attorney general.

"We're stating that we are 67 percent sold, and that is fully executed contracts," Gullixson said. "The public records, what they show is what's closed."

A source close to Trump Soho said that agents had legitimate basis to promote activity at the development during the pre-bust months, considering that roughly 215 contracts had been "sent out," meaning that the agreements were written up and the buyers were ready to submit deposits. Unfortunately for agents, many of those buyers vaporized after the market crash.

But defining this sales activity is precisely what's at stake in the suit.

According to Jay Neveloff, an attorney for the defendants, "substantially more than 100 units [were] in contract and [had] deposits in escrow" when the offering plan was declared effective.

Neveloff said that the additional units weren't included in the offering plan amendment because "it was just a decision that was made with the client" and that the decision was "just administrative for the purposes of the requirement."

On this point, the plaintiffs' team cries foul.

"Every developer ... has to put the exact number of units that have sold [in the offering plan]," attorney Adam Leitman Bailey said. "There has never been a deviation from that."

Geller said that this action could even constitute impropriety on the part of the developer.

"If it's true that they had more than 62 contracts that were not in default, then they were ignoring the regulations," Geller said. "I can't imagine any competent lawyer doing that, because [there is] a disclosure statute."

Amid this "he said, she said," there are those in the legal community not involved in the case who think this suit is less about fraud and more about fancy legal footwork. In the wake of the market crash, many buyers with locked-in contracts have been looking for a way out.

"To me, it sounds like sour grapes," said Cory Weiss, a partner with Ingram Yuzek, Gainen, Carroll & Bertolotti. "As a diligent purchaser, you would want to say, 'I heard 50 percent [of the units] were sold -- I want some hard data.'"