THE WALL STREET JOURNAL. | GREATER NEW YORK

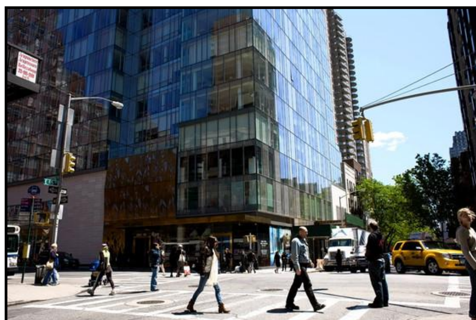
NY REAL ESTATE RESIDENTIAL | May 11, 2010

Opinion May Deliver Help for Condo Buyers

By ROBBIE WHELAN

An exclusive gated community in the rolling horse country of northern Virginia would seem to have little in common with luxury condominiums in Manhattan and elsewhere. But hundreds of New York condo buyers are hoping that a recent legal ruling involving homeowners in the Virginia community will reverberate here.

Since the New York real-estate market's meltdown in 2008, hundreds of potential buyers who laid out hefty deposits to buy condos have tried to use an obscure 1968 federal law—the Interstate Land Sales Full Disclosure Act, or ILSA—to recoup their deposits and back out of their purchase contracts. But so far, New York courts have sided with developers, not consumers.



The Lucida at 151 E. 85th St. in Manhattan where a condo buyer has brought a suit claiming ILSA violations.

The Virginia case, however, appears to be leaning the other way. A federal judge in Alexandria, handed down an opinion at the end of March that could help David and Lia Rensin of Leesburg back out of a contract to pay $2 million for a lot in a development called Creighton Farms, which was designed to have 160 homes and villas and was to be managed by Ritz-Carlton.

The couple took out a construction loan to build a $6 million home next to a Jack Nicklaus-designed golf course. But when Ritz-Carlton pulled out of the development, Mr. and Mrs. Rensin changed their minds and sued the developer, according to court filings.

Ritz-Carlton tried to block the suit by claiming that the development was exempt from ILSA because of the low number of houses that had actually been sold—a key point that has been made by New York condo developers as well. But the judge's ruling rejected the argument. A lawyer for Ritz-Carlton declined to comment.

ILSA requires developers of subdivisions with 100 or more units to provide buyers with a document that lays out a laundry list of disclosures—everything from details about the condo association and zoning regulations to where the nearest police station is located.

If the developer fails to meet disclosure requirements, buyers are entitled to back out of the deal and regain their deposits. The law was originally intended to reduce fraud in the sale of swampland in Florida and desert land in Arizona.

But determining whether a development has 100 or more units, and therefore is subject to the law, isn't as easy it would appear.

In two recent New York decisions, involving the Fifth on the Park condo project in Harlem and One Hunters Point in Long Island City, judges sided with the developers, saying even though the projects were marketed as having more than 100 units, fewer than 100 were actually sold, so the disclosure rules don't apply.

The Virginia decision puts a focus on the developer's intentions, rather than on what ends up happening in the market, according to **William J. Geller** of New York law firm **Adam Leitman Bailey**, who is handling 438 ILSA complaints citywide.

If a developer plans to sell 164 units and markets the project as such, the decision makes it harder for them to gain exemptions to the ILSA rule, even if they only end up selling 31 units, as was the case with Creighton Farms.

Already, Lawrence Weiner, the attorney who argued and lost the Harlem and Long Island City cases, plans to appeal those decisions, using the Virginia opinion as an example. Mr. Weiner plans to argue that it doesn't matter how many units in a building have been sold as long as the developer marketed 100 or more condos.

The New York state attorney general's office, which imposes its own complex set of rules on the sale of condo units, says complaints from remorseful buyers trying to recoup their deposits are on the rise in general.

The office received 475 escrow dispute complaints from New York City buyers in 2009, the year following the market crash, a 182% increase over the number of disputes filed in 2008. In 2010, the rate of dispute complaints seemed to slow, with only 47 applications received through the end of March.

Aviral Rai, a former investment banker at Bear Stearns, put down a $643,000 deposit on a $4.29 million, four-bedroom, 2.5-bath unit at the Lucida, a glassy new Upper East Side building.

He said he and his wife wanted to move there from the Upper West Side so that his two children could be closer to their schools.

But when construction commenced on the building, Mr. Rai said that the unit wasn't at all like the model he visited. The view out of its floor-to-ceiling windows was obstructed. The layout was all wrong, with columns in the wrong places.

Mr. Rai said he might be willing to overlook the flaws if the market were still rising, but with the unit likely to lose value, he decided to pull out.

He sued the developer, Extell Development Co., in late 2009, claiming the company had failed to meet its obligations under ILSA. His is one of at least six cases against the Lucida awaiting judgment.

Gary Barnett, Extell's chief executive, says ILSA wasn't intended to apply to condos in Manhattan, where developers are already subjected to detailed disclosure regulators.

"The buyers are twisting a law intended for something completely different in an effort to obtain a terribly unfair result. In any event, even if ILSA were held to apply to the Lucida, these cases have no merit since we complied with the law in all respects," he said.