

By MAX GROSS; February 26, 2009

For the month of January," says Erika Wadler, "I cried every single day."

What could have waylaid Wadler's heart? Some horrible lothario running roughshod over her feelings? The death of someone near and dear? A peek at her 401(k)?

No, it was the walk-through of her condo.

Wadler's a buyer at the Clement Clarke, a new building in Chelsea that got its temporary Certificate of Occupancy late last year. As she walked through the \$975,000 one-bedroom, she became more and more horrified.

According to her lawyer, Adam Leitman Bailey, Wadler discovered warped floors, a freezer that didn't work and bathtubs and sinks with chunks of marble missing.

Wadler gave the developer a massive punch list. When she went back a few weeks later with a general contractor for another walk-through, she ended up with even more items on the punch list.

Wadler soon found out that she wasn't the only one at the building with such problems. Other buyers claim to have found everything from cracks in the wall to water damage.

One buyer, Jennifer Justice, says a pipe burst inside the walls shortly before she was scheduled to close. Justice says the developer demanded she close or forfeit her deposit. She refused and says the developer has filed a motion to keep her deposit.



GATHERING STORM: Unhappy condo buyers including Erika Wadler (left) and Mike Fitzsimmons (right) have hired attorney Adam Leitman Bailey (middle) to collectively represent them.

Adam Belfer, a representative for the building's sponsor, Chelsea 22nd, says that problems buyers are having are simply punch-list items that will be rectified.

"We want everybody to be happy," he says.

Buyers at the Clement Clarke - like many buyers around the city - have decided that they can get a better response if they act together. So they're communicating with the developer collectively, through Bailey, who is voicing all their concerns.

Unhappy buyers at buildings all over Manhattan are using the Internet - Googling or looking up their neighbors on Facebook - in an effort to organize.

That's what several young professionals, all disgruntled buyers at the new Brompton building on the Upper East Side, did.

They had discovered one another by putting up notices on Yahoo! and real estate message boards. Two weeks ago, about 10 of them met at a bar. First names were the only ones used at the



UPS AND DOWNS: The Brompton (right) was one of last year's hottest new buildings, but some buyers now want concessions from the developer. Bailey says he has negotiated discount

start of the meeting, and some of those names were phony. But once the discussion got going, the cloak-and-dagger atmosphere melted away.

“We are ready to walk away and sue for our deposit,” declared one man. The rest of the group hummed in approval.

Last year, Brompton units were fetching around \$1,800 per square foot. The 190-unit building seemed like a smash hit - about 90 percent of the units sold.

But now that the market is tanking, buyers aren't exactly excited about closing at last year's prices. Hence, the meeting at the bar.

“If you look at the straight economics, it makes no sense to close,” one buyer said, knowing full well that walking away means forfeiting a 20 percent deposit. “In a year, I could get the same apartment for less.”

Collectively, the group estimated that they owned more than \$30 million worth of Brompton apartments - and they claimed that there were other unhappy buyers who couldn't make the meeting and owned another \$30 million or so.

The frustration went beyond the falling value of the apartments. Some buyers complained about low ceiling heights and claimed there were problems including delays, views that never materialized and what they saw as poor construction. They wanted to negotiate discounts and concessions.

The developer, the Related Companies, isn't eager to redo any deals. One of the city's most reputable builders, Related, which declined to comment for this story, also created the wildly successful Time Warner Center and is responsible for the new Superior Ink and Harrison condos. Giving in to buyers at one building could result in a devaluing of all their properties.

But the group at the bar will not go gently into that good night. By the end of the meeting, they decided to hire Bailey as their lawyer.

With much of the market in chaos, lawyers like Lawrence Weiner at Wilentz, Goldman & Spitzer - a firm that has filed lawsuits for clients at new condos including 20 Pine and 75 Wall St. - have set up Web sites such as no-condo.com to advise buyers of their rights.

“Buyers have a lot of clout,” says Bailey, who represents purchasers in 80 other buildings around the city, including 20 Pine.

Collective action has the potential to hurt a developer dramatically. Even successful buildings usually won't be able to pay back construction loans with deposits alone - a sudden rush of units back onto the market could be disastrous. That gives the developer an added incentive to make sure buyers actually close - even if not at full purchase price.

Some developers have come to grips with the need for concessions. At 20 Pine, for instance, Bailey says he has negotiated price cuts as much as 40 percent - for a buyer with multiple units - to ensure a closing.

A spokesman for 20 Pine developer Africa Israel, though, disputes that the building is giving major discounts. According to Africa Israel, more than 70 percent of the building has closed with an average sales price of \$1,050 per square foot, and an additional 10 percent will be closing within the next 60 days.

“At this time there is no need to undertake collective bargaining,” the developer said in a statement.

Sometimes, a collective voice can help draw politicians into the fight.

Last week, The Post reported that YL Real Estate had defaulted on loans to Anglo Irish Bank for 225 Rector Place - and that purchasers were being told that the condo had run out of funds to pay its management company. Owners were in danger of losing heat and hot water and, according to one resident, briefly did last week.

Owners met with a lawyer, Marc Held of Lazarowitz & Manganillo. Since then, state Assembly Speaker Sheldon Silver

has taken up the cause and met with the building's creditor and the owners.

Anglo Irish agreed to pay the Battery Park City taxes on the property and paid the building's management company through this week.

“The bank is in court

attempting to remove [developer] Yair Levy from sponsorship of the building,” says Held.

In this market, that might be as much of a happy ending as buyers can expect.

## RULES OF ENGAGEMENT

You should always do your homework before you buy new construction. For example, you might want to avoid a developer's first building.

“No virgins,” says real estate attorney Adam Leitman Bailey.

But once the die is cast, and you find yourself in a building from hell, here are some things you can do to help yourself:

\* “Before you close on a property, have a licensed engineer look at the place,” says Bailey. “And get the sponsor to make repairs before closing.”

\* Make contact with other buyers. This can be done by looking at the amendments the developer sends out, which often have every purchaser's name. Find them on Google or Facebook. The more people who are unhappy, the stronger your claim. And other buyers might know about issues you haven't noticed.

\* “Visit other buildings of the developer,” says Bailey. This is something you should do before you buy, but if you didn't, you can at least see if there are disgruntled buyers in other buildings who might tell you how they dealt with the developer.

\* Do not close just because the developer says you have to. You are entitled to a unit that is habitable.