

# THE REAL DEAL

## Where are buyers backing out?

*A look at the 20 NYC buildings that have seen the highest percentage of contract disputes since the start of the downturn*

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*By Sarah Ryley*

### **1. The 505 at 505 West 47th St. in Hell's Kitchen: Parkview Developers**

At peak, buyers of 55 out of 108 units (**51 percent**) had cases in federal court to rescind their contracts, which were worth a combined \$43.1 million. Six have since dropped their cases, and three have closed on their units (one received a 3.5 percent discount). The plaintiffs claimed Parkview, headed by **Ian Reisner** and **Mati Weiderpass**, failed to provide the property report required under the Interstate Land Sales Full Disclosure Act. After Parkview realized its mistake, the buyers claim it filed an amendment to the offering plan in an attempt to exempt itself from the law by removing eight units and combining another two, so the initial offering plan would only be comprised of 99 units. ILSA applies to property divided into 100 lots or more. The developer's attorney, Evan Schieber, said Parkview was always exempt, and merely disclosed that in the amendment. This is one of many cases centered on whether the exemption needs to be spelled out when the buyer signs the contract. A spokeswoman for Parkview said, "The developer and its lender are financially sound and have sufficient resources to see this through." She said they're

working with a majority of the buyers to close, "and they are remarketing those units that have defaulted and have already successfully sold a number of those."



*At peak, 51 percent of the buyers at the 505 at 505 West 47th Street had cases in federal court to rescind their contracts.*

### **2. 22 Renwick St. in Soho: Orange Management**

Buyers of at least 7 out of 19 units (**37 percent**) have filed disputes with the AG's office, according to a source involved in the case. The buyers allege that Orange Management missed its June 2009 closing date, pushing through a sham sale to meet the requirement. The developer declined to comment.

### **3. 20 Pine St. in the Financial District: Africa Israel**

Contracts for at least 123 out of 409 units (**30 percent**) in this high-profile conversion have some type of claim pending. Disputes on seven contracts are filed with the AG's office. Contract disputes on 15 units are pending in state and federal court. And a state court judge ruled to refund one buyer's \$229,500 deposit because the developer's agents failed to appear at the closing. In addition to those buyers, nearly 100 owners have signed a notice to preserve their ILSA claim, which they can eventually file in court if the requested building repairs aren't made, said attorney Adam Leitman Bailey. "It's a weapon to get the developer to fix the building," he said, adding that he's negotiated concessions of up to 40 percent to

close contracts. "The building is almost fixed; they've done a great job," said Bailey. Africa Israel, headed by **Lev Leviev**, declined to comment.

#### **4. The Clement Clarke Condominium at 140 West 22nd St. in Chelsea: The Vintage Group**

Buyers of 11 out of 51 units (**22 percent**) filed disputes with the AG's office. One buyer, who filed her dispute through Bailey, said that during her walk-through she discovered her apartment was a "dump" with warped floors and chunks of marble missing from the bathroom fixtures. "If we were in a robust climate, I still wouldn't have closed on that apartment," she told *The Real Deal*. The developer could not be reached, and the sales broker at the building did not return calls.

#### **5. Graceline Court at 106 West 116th St. in Harlem: Lowen Development**

Disputes on at least 6 of 32 units (**19 percent**) have been filed with the AG's office. Lowen declined to comment.

#### **6. The Rushmore at 80 Riverside Drive on the Upper West Side: Extell Development**

Buyers of at least 37 out of 289 units (**13 percent**) have filed claims either with the AG's office or in state court to get back their deposit, claiming the developer missed its promised closing date of Sept. 2008. Attorney Richard Cohen told *The Real Deal* he represents 34 buyers with contracts totaling \$110.7 million who have rescission requests filed with the AG's office. Another buyer filed to rescind on her \$6.9 million contract for two apartments in state court on the same basis. Her suit also claimed Extell, which is headed by **Gary Barnett**, failed to obtain necessary approvals. The company declined to comment. However, it has claimed in new reports that the date was a typo, intended to read "Sept. 2009."



*Al Laboz is the developer of Soho Mews, where contract disputes have been filed for at least 12 percent of the condo's units.*

#### **7. Soho Mews at 311 West Broadway in Soho: United American Land**

Contract disputes have been filed for at least 8 out of 67 units (**12 percent**). Seven disputes have been filed with the AG, and one contract for \$2.4 million is in dispute in state court, claiming the condo began operation more than six months later than the anticipated date of July 2008. Fourteen units have closed in the building since April 2009. "We had seven AG disputes, and we won six of them and the other one was dismissed," said the developer, **Al Laboz**, adding that he expects to win the court case as well. "Frankly, the reason why these disputes were started is, the people signed their contract at the height of the market and the market has dropped, and they refused to close."

#### **8. (tie) 5th on the Park at 1485 Fifth Ave. in Harlem: Uptown Partners**

Contracts on at least 14 out of 160 condo units (**9 percent**) and two parking spaces are in dispute. Cases involving eight of those units and the two parking spaces, which are worth a combined \$7.6 million, are filed in state and federal court. Six disputes are filed with the AG's office. Attorney Lawrence Weiner said the ILSA cases involving seven units in this building could be among the first to be decided in New York. A trial is set for Jan. 26. Developer **Lew Futterman** said many buyers simply can't come up with large enough down payments. Uptown

Partners has tried offering a rebate toward the down payment and now has a second mortgage program to help bridge the gap. Still, in addition to the 14 contract disputes, Futterman said, "30 to 40 people are sitting on the fence -- not saying 'No, we're not going to close,' but just sort of quasi ignoring us."

#### **8. (tie) The Laurel at 400 East 67th St. in Lenox Hill: Alexico Group**

Buyers of at least 11 out of 129 units (**9 percent**) have filed claims. Of those, three disputes were filed with the AG. Seven ILSA claims, for apartments worth a total of \$15.7 million, were filed in federal court, but one was dismissed. The remaining dispute was a claim filed in state court by a couple citing the "World Financial Crisis of 2008." That case was dismissed three days after it was filed, and the couple closed on the unit for the originally agreed-upon price of \$2.02 million. Alexico, which is led by **Izak Senbahar** and **Simon Elias**, issued this statement: "We view all of these disputes as purchasers looking for excuses to back out of contracts. ... We are countersuing for the full deposit and legal fees."

#### **10. (tie) One Hunters Point at 5-49 Borden Ave. in Long Island City: Simone Development**

## Companies

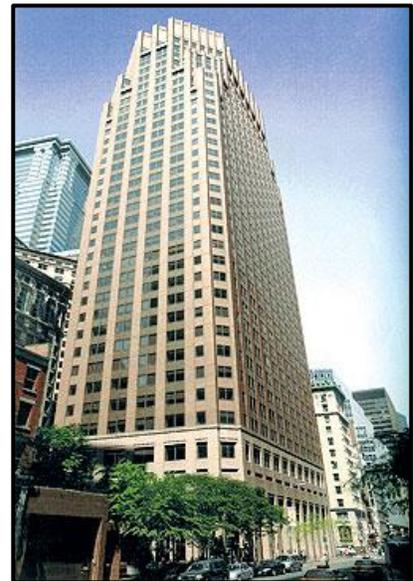
Contract disputes have been filed for at least 10 out of 131 units (**8 percent**) and two roof terraces. Contracts for eight of the units and the two terraces, which are worth a combined \$5.4 million, have ILSA cases pending against them in federal court, while the remaining two units are being disputed through the AG. Bruce Lederman, the attorney for Simone, which is headed by **Joseph Simone**, said HUD exempted the building from ILSA in July because fewer than 100 units were sold by the time the building was finished. But Weiner, the plaintiffs' attorney, argues that exemption is not retroactive. A decision on the case is expected around spring, and will have implications for other buildings claiming a retroactive exemption.

### 10. (tie) 133 West 22nd St. in Chelsea: Magnum Real Estate and Ascend Group

Disputes on at least 7 out of 90 units (**8 percent**) have been filed with the AG. Magnum principal **Ben Shaoul** said the firm is "confident, based on our experience, that we will prevail." He noted that the building initially had a 30 percent default rate, "but we sat down with every single buyer, and got everyone a loan."

### 10. (tie) 75 Wall St. in the Financial District: Hakimian Development

Buyers of at least 28 out of 349 units (**8 percent**) have filed claims in state and federal court to get their deposit back. Of those, 27 are ILSA cases totaling \$30 million. In addition, Prudential Douglas Elliman broker Hela Miodownik filed a claim in state court for return of her \$111,000 deposit, claiming, in part, that she had an agreement that her unit would close only after the rest of the building had sold and the Andaz Hotel opened at the site. Her purchase was a "marketing tool" meant to entice foreign buyers she represented to buy in the building, she claimed in the lawsuit. Developer **Rex Hakimian** said the buyers trying to get out of contracts are grasping at straws. "These all appear to be nothing more than cases of purchasers trying to misuse ILSA to back out of contracts they signed before the market went down," he said. "We have valid defenses and are countersuing the purchasers to obtain their full deposits as well as our legal fees."



*At 75 Wall Street, 8 percent of buyers have filed claims in court to get their deposit back.*

### 13. The Brompton Condominium at 205 East 85th St. in Yorkville: The Related Companies

At peak, contracts for at least 13 of 193 units (**7 percent**) were in dispute in six cases in state and federal court, worth a combined total of \$44.3 million. Some of the cases have been dropped, with one buyer closing at full contract price. One of the pending cases is from a Canadian steel magnate who signed a contract for four penthouses worth \$25.8 million. He claims Related, which is headed by **Stephen Ross**, misrepresented views and ceiling heights, failed to permit an engineer's inspection of the common areas, and lied about access to the Equinox fitness club. Both parties declined comment, citing a confidentiality agreement.

### 14. District at 111 Fulton St. in the Financial District: Africa Israel

Buyers of at least 10 out of 163 units (**6 percent**) are disputing their contracts. That includes four ILSA claims totaling \$3.62 million pending in federal court, and six arguments filed with the AG. **Lev Leviev's** Africa Israel declined to comment.

### 15. 170 East End Ave. in Yorkville: Skyline Developers

At peak, contract disputes for 6 out of 110 units (**5 percent**) worth a combined total of \$38.3 million had been filed in state court. Developer **Orin Wilf** said four of the cases have been settled, with the buyer either closing on their unit or on an alternative one. Two other couples have cases pending. "They figured this was the best route to get to their ultimate goal, whether it was to get a discount on a unit or to buy a cheaper unit."

**16. (tie) Oro Condominium at 306 Gold St. in Downtown Brooklyn: Greenfield Partners**

Buyers of at least 12 out of 309 units (**4 percent**) are disputing their contract. Six disputes have been filed with the AG, and six ILSA claims for units totaling \$3.2 million have been filed in state court. Greenfield did not respond to a request for comment.

**16. (tie) Platinum Condominium at 247 West 46th St. in Times Square: SJP Properties**

Buyers are disputing contracts on at least 9 out of 218 units (**4 percent**). Seven buyers have disputes pending with the AG. A contract holder for a \$2.46 million unit filed a dispute in state court, claiming he was promised 12-foot ceilings throughout, but that some ceilings were as low as 8 feet, 4 inches. An ILSA claim filed in federal court was dismissed. SJP, which is headed by **Steven Pozyccki**, said in a statement, "We can unequivocally state that the few escrow disputes that did arise with regard to this building, an insignificant number in the context of a building this size, have all been resolved in our favor."



*Andre Balazs co-developed William Beaver House, where 3 percent of buyers are trying to get out of contracts.*

**18. (tie) William Beaver House at 15 William St. in the Financial District: André Balazs and SDS Investments**

Buyers are trying to get out of contracts on at least 10 out of 319 units (**3 percent**). Six disputes have been filed with the AG. ILSA disputes on contracts for three units worth a combined \$5.5 million were voluntarily dismissed, but the units have not closed. Another dispute for a \$1.05 million contract was filed in state court because the buyer claimed, after walk-throughs, that the amenities were not what she was promised. SDS president **Laurence Davis** said, "All of these contract claims are baseless and are reflective of a declining market leading to buyer's remorse for some purchasers." He said his project complied with ILSA. SDS developed the project with **André Balazs**.

**18. (tie) The Powerhouse at 50-09 2nd St. in Long Island City: CGS Builders**

Buyers of at least 5 out of 176 units (**3 percent**) are disputing contracts -- two with the AG, and three through ILSA -- for apartments worth a combined \$1.96 million. Developers' attorney Laurence Sklaw said: "The handful of contracts in dispute have no impact on the solvency of this building, which is doing just fine."

**20. One Brooklyn Bridge Park at 360 Furman St. in Brooklyn Heights: RAL**

**Companies & Affiliates**

Buyers of at least 9 out of 449 units (**2 percent**) and two cabanas are attempting to break contracts. Disputes on five contracts have been filed with the AG. There are ILSA claims connected to the remaining four units and the two cabanas, with contracts worth a combined \$7.71 million. One of the cases, concerning two units, was voluntarily dismissed. RAL, which is headed by **Robert Levine**, declined to comment.

*Notes: Only buildings with five or more contracts in dispute were included. Unless otherwise noted, the number of disputes filed with the state attorney general's office for a particular building was acquired via a Freedom of Information Law request. Not all disputes were provided in response to that request. Court cases were obtained from the NYS Supreme Court and Administrative Office of the U.S. Courts online database. "Units closed" is based on closed sales only, from StreetEasy. Other sources include articles, attorneys, plaintiffs and developers.*