



REAL ESTATE

When New Construction Falls Short

Ask Real Estate

By RONDA KAYSEN OCT. 10, 2015

Not Delivered As Promised

Several months ago, my husband and I signed a contract for a Brooklyn condo that was under construction. A few weeks ago we visited the apartment for the first time. We found numerous construction issues. Some were minor, like rooms that were smaller than promised, but others were more serious, like a compressor for an air-conditioner that was inside the apartment near a bedroom, rather than outside on the roof. We believe the developer will let us out of our contract, but we've lost a lot of time, and prices have risen. I don't mind the idea of moving on, but I think we were misled. Do we have any leverage to be compensated?

Bedford-Stuyvesant, Brooklyn

Who wouldn't want to live in new construction? It's so sparkly and pristine! But it's also untested. And as you have discovered, the promises made in an offering plan can sometimes ring hollow — rooms shrink, Italian marble

gets swapped for a less glamorous alternative. While some shortcomings are tolerable, others — like an air-conditioning compressor installed in your living quarters — are not.

A compressor should be outside so it can discharge the heat it generates during the cooling process, according to Howard L. Zimmerman, an architect whose office frequently inspects new construction. At this point, you should probably cut your losses and look for a new home. “Move on,” Mr. Zimmerman said, “because the disappointments will only increase over time and become more annoying.”

As unfair as it might seem, getting out of your contract and getting your deposit back “is, most likely, the best that you’re going to do,” said Robert J. Braverman, a Manhattan real estate lawyer. The offering plan likely includes language that would protect the developer from claims you could make against him and you would not have a strong claim to sue for your added costs and inconvenience.

“To prove that the developer deviated from what was promised in the offering plan is a long, tedious road,” Mr. Zimmerman said. Consider your good luck: You found out about the ill-placed compressor before you ever slept in that bedroom, making it possible to walk away. And you appear to be working with a developer who is willing to let you out of the contract and return your down payment. Other people in your position have not been so fortunate.

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A Mortgage Denied

Just before I went into contract on a condo, my bank denied my mortgage, citing “investor concentration.” Apparently, too few owners owned too many of the units. Do New York State real estate laws or condo bylaws prevent people from buying up too many apartments in a building? If

owners can sell only to buyers willing to pay cash, won't prices eventually fall? If nothing else, it must make it more difficult to actually sell an apartment.

Westhampton, N.Y.

It is perfectly legal for a person to buy several apartments in the same building. So condos, for the most part, cannot stop someone from doing it. The problem, which you have discovered, lies with the banks. In general, lenders will not give someone a mortgage in a building where one investor owns more than 10 percent of the apartments or where more than half the apartments are owned by various investors, according to Daniel M. Shlufman, the managing director of Classic Mortgage.

Why are banks so skittish? Fannie Mae and Freddie Mac will not back loans in such buildings, so banks cannot resell these loans. Even the banks and investors that underwrite jumbo loans, which are not backed by the mortgage giants, tend to follow these guidelines. "It is really quite a problem in a lot of areas," Mr. Shlufman said, "especially where the rents are high."

In pricey areas like New York City and Long Island, investors frequently hold onto apartments to use them as rentals. Freddie and Fannie see this as a problem. "They view excessive investor concentration as a credit risk," said Matthew J. Zangwill, a Long Island real estate lawyer. What if the investor stops paying common charges on a dozen apartments? Or defaults on his mortgages?

An overabundance of investor-owned apartments signals other problems, too. An investor sitting on the board could be more concerned with maximizing profits than with remodeling the lobby or replacing the roof. So lenders steer clear of buildings like the one that you recently found. As you noted, this can make it difficult to sell apartments, potentially driving down prices.

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Converting a Super's Apartment

The superintendent of our co-op is buying an apartment in the building. He will be moving out of the designated super's apartment, which is on the first floor. When he moves into his new apartment, can we convert the super's apartment to a co-op unit and sell it, with money going to the co-op? There is a two-bedroom in the basement that could be used for a super's apartment in the future, should we need one again.

Sheepshead Bay, Brooklyn

With real estate values soaring, many co-ops have been putting “for sale” signs on spaces like basements, hallways and employee apartments that are owned by the building. The sale of a piece of the building can deliver the co-op a windfall and permanently increase the maintenance rolls by adding new shares. So it comes as no surprise that your co-op board is eyeing this vacant apartment.

In order to sell the apartment, the board would need to allocate and issue new shares based on the size and value of the apartment, according to Thomas P. Higgins, a Manhattan real estate lawyer. Usually if a co-op sells shares, it must file a prospectus with the state. But in this case the co-op could apply to the Attorney General's office for what is called a “no-action” letter, eliminating that step. Discuss the issue with the building's attorney, as tax and transfer issues will need to be addressed.

Even though this might seem like a logical plan, some residents may balk, particularly rent-stabilized tenants who might object to the sale, asserting that it amounts to a reduction in services. (They could argue that having a super living on the first floor made it easier to access services.) “People don't like change,” Mr. Higgins said. If they are successful in their claim, they could get a rent reduction. To keep that from happening, the board would need to make

sure that the same level of service is provided to all residents, even after the sale, and even if the super lives in a different apartment.

Submit your question as a comment or email to realestateqa@nytimes.com

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