

THE REAL DEAL

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170 East End hit with five suits seeking millions of dollars and contract revocations

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The new luxury condominium 170 East End Avenue has been hit with what one real estate attorney calls a "surprising" number of lawsuits since closings in the building began last year, including one for more than \$50 million.

Five individual buyers have brought suits against the Upper East Side condo's sponsor, Skyline Developers, which is a subsidiary of the New Jersey-based Garden Homes Development and whose principal is Orin Wilf. The development's marketing company, the Corcoran Sunshine Marketing Group, has been named in two of the suits.

Three of the lawsuits have alleged that, in one form or another, the completed building does not conform to offering plan and/or marketing descriptions of how the finished product was supposed to be delivered. The other two lawsuits have alleged that the 110-unit building's first closing did not occur when the offering plan said it would.

While the downward-trending market has resulted in a greater number of real estate-related lawsuits, which *The Real Deal* examined in its April issue, attorney Allison Scollar, who heads up the real estate division at law firm Guzov Ofsink, said that five individual lawsuits from buyers against a developer is an unusually large number.

Scollar, who is not involved with any of the legal actions taken against the Peter Marino-designed 170 East End Avenue, said that it's "a surprising number of lawsuits" against a development but that, going forward, there's likely to be a substantial increase in litigation involving buyers "who aren't happy with the finished product" in new condos in general.

In one of the lawsuits, the buyers of a \$2.15 million unit that closed in late April 2008 allege that noise emanating from the building's garage has made life "unbearable" for them. The lawsuit names the developer, Corcoran Sunshine, and the garage's operators as defendants. The plaintiffs, according to their complaint, seek to limit the number of hours the garage is in operation at night, rescind their purchase agreement, and be paid damages and legal fees by the defendants.

The developer did not return telephone calls seeking comment on the litigation against 170 East End Avenue, which is on the former site of Beth Israel Medical Center's former Herbert and Nell Singer Division building between 87th and 88th streets. A Corcoran Sunshine spokesperson and the lawyer for the plaintiffs declined to comment on the case.

Another lawsuit from a 170 East End Avenue contract-holder filed in State Supreme Court in early February, meanwhile, alleges that the building's developer did not "cure" mechanical problems associated with the buyers' \$7.25 million unit, which was scheduled to close in December. The buyers refused to close on the unit because of the alleged mechanical defects, and they are seeking to have their

contract revoked, their deposit returned, and damages and legal fees paid.

Two other lawsuits brought against the developer allege that the building's first closing did not occur when the condo's offering plan said it would, and because of that the buyers are entitled to have their contracts rescinded.

One of those suits, which was filed last summer, involved a \$3.55 million contract of sale, and it was ultimately settled, according to the defendant's lawyer, Peter Moulinos of Moulinos & Associates. Moulinos said he could not divulge the terms of the settlement, citing a confidentiality agreement.

According to public records, the plaintiffs never closed on their unit, number 11C, at 170 East End Avenue.

The other of those two suits, which has not been settled, was brought against the condo's developer by a contract-holder for an \$8.4 million unit. The plaintiff is seeking to get out of his contract; have his deposit returned; and, because of allegations that the developer's behavior regarding the first closing was "fraudulent," wants an award of damages "no less than" \$50 million.

The plaintiff's lawyer, Michael Pensabene of the firm Rosenberg & Estis, said he could not comment on the lawsuit since it is an active case.

The fifth contract-holder's lawsuit against 170 East End Avenue was filed in late January. In it, the buyer of a \$4.43 million unit alleged that the developer and Corcoran Sunshine engaged in a "bait and switch," because the unit's ceiling heights were lower than the specifications outlined in the offering plan, and "the lowered ceiling heights materially and adversely impact the unit's value, comfort, and appearance."

The case was ultimately settled, according to the plaintiff's lawyer, Richard Kaye of Ellenoff, Grossman & Schole. Kaye said he could not divulge the terms of the settlement, citing a confidentiality agreement. According to public records, the plaintiffs never closed on their unit, number 11F, at 170 East End Avenue.

By Gabby Warshawer