

The Case Of The Incomplete Condo

IT WAS A BAD SITUATION. Promises made in the offering plan had been broken. The floors were not solid oak, but “engineered wood,” heaters didn’t work properly, door knobs were missing, and exhaust fans were causing vibrations. How did it happen?

Blame it on the contractors but also look to the clientele: the new owners. Indeed, if they ever make a TV show about the posh new six-story condominium building at 88 Washington Place in Greenwich Village, they should call it *The Young and the Rest of Us*.

That’s because most of the building’s 14 condo apartments are occupied by well-to-do twenty- and thirtysomething professionals - lawyers, accountants, doctors, and hedge fund managers who can afford to pay \$1.6 million for a two-bedroom apartment and more than double that for a three-bedroom penthouse. The building’s most senior citizen is a well-known actor who is a relatively ancient 60 years old.

As might be expected, the majority of these young buyers are first-time homeowners. That fact, coupled with some unforeseeable and unpleasant surprises, led the residents of 88 Washington Place right to the brink of a nasty legal battle with the sponsor - before they were rescued by an unforeseeable but pleasant surprise.

A SURPRISING PAD

Josh Katzman is a 30-year-old attorney who moved into the building in the summer of 2007. He was the first person to spend the night there, and he was greeted by some unsettling surprises.

“There were certain things promised in the offering plan that were not in place when we moved in,” says the boyish-looking Katzman, who is now president of the condo’s board of directors. “For instance, [the floors] were ‘engineered wood’ [a thin wood veneer placed over particle board]. Other than that, there were punch list items that were never completed and the [noisy] exhaust fans made it difficult for people to sleep. We were supposed to have a security system, but it wasn’t in place in the elevators, and it wasn’t working when we first moved in. On little things, they completely dropped the ball.”

For a building that went up during the peak of the city’s recent construction frenzy, such problems do not qualify as true horror stories. In fact, one resident described most of the problems as “minor.” Still, when you’re paying well over \$1 million for something, you want to get what you were told you buying.

“One of the problems was that most of the people in the building are young and they had been renting,” says Manoj Gupta, a 32-year-old hedge fund manager who has lived in the neighborhood since coming to New York eight years ago and now owns a two-bedroom apartment in the building. “They had no experience dealing with sponsors, and they didn’t know what to expect.”

But not even a seasoned real estate speculator could have anticipated the spiraling problems, large and small, that bedeviled this building. The sponsor, a small family-owned business called *Ciao-Di Restaurant Corp.*, signed up Paxton 350 as a development partner. Paxton then subcontracted the construction work. During construction the general contractor, *Ameribuild*, went bankrupt, forcing the sponsor to scramble to finish the job. To top it off, the sponsor terminated the development partner over the management of the project, which led to lawsuits that are still wending their way through the courts.

“It ended up being a complete mess,” says Gupta. “After we moved in, if there were things that weren’t done, they didn’t get done. For months, no money was moving and nothing was getting done.”

The building’s woes didn’t stop there. The original managing agent, installed by the sponsor, was failing to pay bills, overcharging for services, and making unauthorized withdrawals from the reserve fund. When the building’s first board was elected in October 2007 - consisting of five residents and two

sponsor representatives - it promptly hired attorney Geoffrey Mazel, a partner at *Hankin & Mazel*. It then began the arduous process of firing the management company and re-placing it with *Cooper Square Realty*. An independent auditor is now trying to untangle the building’s finances.

“They had to get organized very fast and figure out what to do and where to turn,” says Mazel. “The big wild card on this is that the attorney general is supposed to be policing offering plans, but it’s extremely difficult to get any sort of action.”

In fact, it’s virtually impossible. In 2005, the wing of the attorney general’s office that handles real estate matters was folded into the investor protection bureau, which focuses on cases against securities firms. The *New York Times* reported in February 2008 that the attorney general’s office has not investigated complaints from condo buyers since 2005. The squeakiest wheel gets the grease. With that unpleasant fact of life in mind, the residents of 88 Washington Place came to the logical conclusion that the attorney general’s office was not the place to air their grievances. They then began mulling over an equally distasteful option -taking the sponsor to court.

As an attorney, board president Katzman was well acquainted with the drawbacks of such an action, and he convinced his neighbors that they were substantial. “We felt any lawsuit would be time-consuming and expensive,” he says. “Whatever benefits we would get would cost twice as much in legal fees, and it wasn’t even guaranteed that we would win. I didn’t want to deal with the aggravation and nobody else did, either. If we have to have a continuing relationship with the sponsor, it’s much better to come to a compromise and work together. Once there’s a lawsuit, people don’t want to be in the same room with each other. It’s horrible.”

Then Katzman and his neighbors got lucky.

LUCKY STRIKE

Like many condo developers, the sponsor of 88 Washington Place had retained ownership of the building’s commercial space. The ground floor is a bank branch; the second floor has been leased to a day-care center.

But because of a design glitch there is only one exit from the second story - not the two required by law. The sponsor approached the board and asked for use of the condo’s lobby as a second means of egress for the daycare center.

“Once we heard that, we realized we had leverage,” says Katzman. “We wanted to put our demands in one fully enforceable contract rather than going to the attorney general.”

“That [need to use the lobby] was the lever,” adds Mazel, the attorney. “Another board could have signed that away. But these are sharp people and they parlayed that into a settlement. It was so valuable to the sponsor that it was worth it to him to get the whole thing done with.”

Observes Al Noe, one of two sponsor representatives on the condo’s board: “It was always our intention to sit down and resolve outstanding issues. Our objective was that the new home buyers were happy. We’re cordial, and I respect the other people on the board. It’s a perfect example that if you sit down and try to work your differences out, you don’t have to go into the court system. Going to court is a lose-lose situation. The only ones who win are the lawyers.”

At a recent board meeting held in Katzman’s apartment, Noe showed up with a couple of bottles of *Beaujolais*. “Might as well enjoy ourselves,” he said, as corks popped.

In return for use of the lobby, the sponsor agreed to pay all residents \$10-per-square-foot for the change in the flooring material, to finish all common areas, to make major repairs (including a faulty air-conditioner that was leaking water through the ceiling of Gupta’s apartment), and to enhance the building’s security. The sponsor even donated a natural-gas grille for the building’s communal outdoor deck.

“Sponsors of condominiums often retain ownership of commercial space,” says Mazel. “Other condos should look to that and see if they can leverage the sponsor into doing what they’re supposed to do.”

While Mazel lauds the board for being sharp and savvy, there’s no denying that it also helps to be lucky.

“Overall, I don’t think you could call it anything other than luck,” says Gupta, who served on the condo’s original board for one year. “If we hadn’t had that situation on the second floor, it’s unlikely we would have gotten results for a long time, especially on things that involved a financial settlement.

“We were lucky,” he repeats. “We think it has worked out very well.”