Purchaser sues Hotel Georgia residences project for deposit after delays

A purchaser of a unit at the Private Residences at Hotel Georgia, is asking a court to declare that he and other purchasers are entitled to their deposits back as the units aren't ready as promised. C.H. Lee said he agreed to buy one of the units in 2007 and put down a deposit of $312,250 (25 per cent of the purchase price) on an apartment that was supposed to be ready December 2011.

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A purchaser of a unit at the Private Residences at Hotel Georgia, is asking a court to declare that he and other purchasers are entitled to their deposits back as the units aren't ready as promised.

C.H. Lee said he agreed to buy one of the units in 2007 and put down a deposit of $312,250 (25 per cent of the purchase price) on an apartment that was supposed to be ready December 2011.

Last month, Lee received a letter saying that date had to been moved to late 2012.

While developers are allowed to take longer than originally forecast, they have an obligation to let purchasers know and that information must be provided in a certain way, Lee's lawyer Bryan Baynham of Harper Grey LLP, said.

Under development law (as set out in the Real Estate Development Marketing Act or REDMA), developers must provide a disclosure statement setting out material facts about a project and if those facts change, an amended disclosure statement must be provided.

In this case, the developer, Georgia Properties Partnership, advised Lee his unit would not be ready but did not amend the disclosure statement, said Baynham, who is seeking to have the lawsuit certified as a class action. And that's enough to enable Lee and other purchasers to get out of their contracts, he said.

“It’s that simple,” Baynham said.

“The development industry has great power and it can do all sorts of things,” Baynham said. “They just have to tell people and they have to tell them in a formal prescribed way.”

None of the allegations in the case have been proven in court.

Baynham said Lee and other purchasers aren’t necessarily going to back out of their deals. They just want to know if they have that option.

The Lee case is just the most recent in a string of cases where developers have been taken to task for not following the rules.

In a decision handed down Wednesday, the B.C. Supreme Court held that four purchasers in a development in Port Moody were entitled to rescind their agreement to purchase and get their money back, despite the fact they had been living in the apartments since February 2009. In that case the developer, Onni Development, prepared an amended disclosure statement — which advised purchasers that subdivision approval had been granted, that construction had commenced and the estimated date of completion remained the same — but failed to provide a copy to the purchasers.

B.C. Supreme Court Justice Paul Pearlman said REDMA was “clear, unambiguous and mandatory.”

“As consumer protection legislation, the statute must be generously interpreted in favour of the consumer,” Pearlman wrote in his judgment.

Pearlman also found the developer was not entitled to rent for the time the plaintiffs lived in their units as the objective of the legislation was consumer protection and there was no provision for payments to the developer.

Baynham is involved in a third similar case in which 68 purchasers are seeking to rescind their contracts to buy in Olympic Village on the grounds the disclosure statement did not fully identify who the developers were.

There are more cases now because there's a better understanding of REDMA, Baynham said.

"And the courts are putting real weight behind the consumer protection aspects of it," he said. "They've said 'if you have the ability to sell something three years in advance and get huge amounts of money up front from people you've got to give them basic information that you have and they don't have'," Baynham said.

Calls to Georgia Properties and Onni were not returned before deadline.