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Liberty Walk buyers won't have to pay more

Developer due credit for honouring commitment

On May 2 of this year, the entire Liberty Walk condominium project on Lawrence Ave. W. near Dufferin St. burned to the ground. The would-be purchasers of nearly 200 townhouses watched their dream homes go up in smoke.

Last week, the developers announced that the project would be rebuilt within the time limits set out in the original agreements of purchase and sale, although those times are about a year later than originally anticipated.

On May 12 in this column, I reported on the position of the unhappy purchasers.

Physically, all of the townhouses were constructed on a concrete slab which served as the roof of the underground parking garage. I reported in May that if the slab was not damaged, and was structurally stable, reconstruction could begin as soon as the site is cleaned up from the fire debris.

After the fire, David Hirsh, president of Liberty Walk Developments, told me that Liberty Walk would definitely be rebuilt, whether the parking slab is good or not. If Liberty Walk could rebuild the townhouses within the time limit set out in each offer, Hirsh said, it would do so.

Most of the Liberty Walk agreements of purchase and sale were signed in mid to late 1999. About half of the agreements had tentative possession dates of April 30, 2000, and the other half had dates of Aug. 30, 2000.

Each agreement has a clause allowing the builder to extend the tentative possession date by up to 24 months from the originally scheduled possession date. Virtually all new condo offers contain similar clauses.

Under this provision, fire or no fire, Liberty Walk has the option to extend occupancy on half of the units to April 30, 2002, and on the other half, to Aug. 30, 2002. For home buyers who'd been expecting to move in this summer, that was small consolation.

Last week, Richard Wong, one of the lawyers for the developer, faxed a letter to each purchaser's lawyer setting out the current status of the project. Wong confirmed that the Fire Marshall's report linked the cause of the fire to combustible materials used by an employee of one of the roofing trades. He announced that Liberty Walk has every intention of rebuilding the project "as soon as possible," and it is currently making arrangements to have the site cleaned and ready for construction.

Consulting engineers were retained by the builder and its insurers to examine the parking garage structure. The engineers have now completed extensive tests of underground garage, and have confirmed that it is structurally intact and sound.

According to Wong's letter, "Substantial completion of the condominium sufficient to permit your client's lawful occupancy of the dwelling unit is now anticipated to occur" by the "tentative possession date set out in ... your client's agreement of purchase and sale."

Those dates are either April 30 or Aug. 30, 2002.

In view of the decision to rebuild according to the existing schedule, Liberty Walk will honour its contractual commitments to each purchaser and expects to deliver the houses before the final deadlines.

Liberty Walk will not be asking for any extension of the closing date beyond the outside limits set out in each agreement of purchase and sale. Similarly, the vendor is also expecting all of the purchasers to remain "ready, willing and able to complete" the transactions under the terms of the agreements of purchase and sale.

"Therefore," Wong wrote, "any requests to be released from the contract will not be entertained at this time."

Can Liberty Walk rebuild half the townhouses by next April 30 and the remainder by the end of August, 2002? Other builders I have spoken to in recent weeks say it's just a matter of resources. If all of the materials are delivered on schedule, and enough tradesmen are available, the houses could very well be available in time.

Liberty Walk could easily have delayed completion beyond the scheduled deadlines, killed the original deals, and resold the houses at 2001 prices. Instead it chose to honour the 1999 prices, and the principals of Liberty Walk and their insurers deserve a great deal of credit for this decision.

The president of the Toronto Real Estate Board is adamant that lawyers should not sell real estate. This, despite the fact that we are legally entitled to do so as part of a law practice, without being licensed under the Real Estate and Business Brokers Act.

In an article in the current issue of REM (Real Estate Magazine), a quote attributed to TREB president David Pearce manages to insult the entire legal profession by saying lawyers shouldn't sell real estate "when everyone knows that lawyers steal more from their clients than real estate agents, and it's rare that happens with real estate agents."

The article also quotes him as saying, "If you get lawyers involved in the sale of real estate, you'll certainly see some fraud happening."

When I asked Pearce about these statements last week, he said that they did not represent his position and that the statements are "her (the reporter's) words, not mine." He added: "She took the statements out of context."

Jennifer Braaksma, the writer of the REM article, told me she had detailed notes of her conversation with Pearce, and did not make up the quotations which, she says, are accurate and used in context.

Ontario legislation has long allowed lawyers to be involved in the sale of real estate.

As industry partners, lawyers and real estate agents need to work together in a spirit of co-operation, in the public interest. If these quotes attributed to the TREB president are indeed accurate, Toronto's real estate agents deserve better representation at TREB headquarters.

Bob Aaron is a leading Toronto real estate lawyer.

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