Purchasing from a Sponsor

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With the tremendous amount of new construction and conversion of rental and even commercial buildings to residential condominiums, many transactions involve sales from "sponsors." Sponsors, usually the developers of the project, sell individual or blocks of units to purchasers. This article discusses some of the differences between sponsor sales to individual residential purchasers.

At the beginning of a new development project a sponsor is required to file an "offering plan" and receive approval of the plan and any amendments made thereto from the Attorney General of the State of New York. The offering plan includes a Schedule A, providing a list of the individual units available for purchase, the offering price and estimated carrying charges per unit. While a sponsor can sell a unit for less than the offering price, a sponsor is prohibited from selling a unit for more than the offering price listed in the Schedule A; for this reason "bidding wars" are not common. A sponsor may from time to time, amend the offering plan to increase the offering price for one or more units. This would not affect a purchaser already in contract to purchase a unit, but the amendment will permit the sponsor to accept higher offers for units not yet in contract.

Unlike a resale, at the time the purchase agreement is executed, it is common for a deposit to be paid equal to ten percent (10%) to fifteen percent (15%) of the purchase price. Further, many sponsor's typically require a second deposit due upon the earlier of six (6) months from the date of the fully executed purchase agreement or fifteen (15) days after the offering plan has been declared effective. Typically an offering plan may be declared effective by a sponsor after fifteen percent (15%) of the units being offered for sale are in contract, but must be declared effective once eighty percent (80%) of the units are in contract. Until the offering plan is declared effective, a sponsor can abandon the project and, upon the return of the deposits collected, cancel the purchase agreements. While not a common occurrence, events that cause abandonment are usually either the failure to sell enough units for the project to be financially viable for the sponsor, or the sponsor's inability to obtain construction financing necessary to complete the project.

The difference between closing costs of a resale and a sponsor unit can be quite sizeable. While a resale seller has the obligation for the payment of New York State and New York City transfer taxes and their own attorney's fees, it is customary that these obligations are passed to the purchaser of a sponsor unit. Additionally, other closing costs not typically associated with resale units that are common to sponsor units include payment of a working capital fund contribution (usually the equivalent of two months of common charges), contribution toward the superintendent's unit, if any, and payment of recording fees satisfactions of any mortgages or liens at closing.

It should be noted that when a purchaser pays any additional fees, these amounts are added in to the purchase price as consideration for calculation of the transfer taxes. While the parties may have agreed on a purchase price that is below $1,000,000, the purchaser may be subject to payment of the New York State Mansion Tax in the event the payment of the purchase price, transfer taxes, sponsor's legal fee and the contribution toward the superintendent's unit totals over $1,000,000.

In a standard resale transaction the closing date is an "on or about" date, which provides that the purchaser and seller have the right to a reasonable adjournment of the closing date; a right provided for in the contract. When purchasing a unit from a sponsor, the purchase agreement will rarely list a certain date for closing, usually because the project has not yet been completed at the time the purchase agreement is executed. Purchase agreements provide the closing date will be upon thirty (30) days' notice from the sponsor to the purchaser. This date is a "time is of the essence" date, meaning that in the event the purchaser cannot close on the date set by the sponsor to close, the purchaser can be held in default. Common default remedies available to the sponsor include a daily penalty equal to a percentage of the purchase price (0.02%–0.04%) and/or cancellation of the purchase agreement and forfeiture of the deposit, which may be substantially more than the standard ten percent (10%) to a resale transaction.

As a condition precedent to closing, the sponsor is required to file the "condominium declaration" with New York City Register and obtain a temporary or final certificate of occupancy covering the unit. The unit must also be substantially completed and in habitable condition. During an inspection of the unit by the purchaser prior to closing, a "punch list" is compiled listing the outstanding issues, minor in nature, for which the sponsor will be obligated to repair within a reasonable time from closing. Pursuant to the purchase agreement, the sponsor will not be required to issue a credit to the purchaser nor hold an escrow to insure these items are repaired, but the sponsor's obligations to make these repairs will survive the closing.

There are many differences and costs when purchasing a unit from a sponsor. It is important to be aware of and note these issues before a purchase agreement is executed.

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