

Creaks, Leaks, and the Law

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Q I recently purchased a unit in a newly built condominium complex in Manhattan. Upon moving into my apartment, I discovered that the plumbing systems did not function. In addition, the shelves in the kitchen were improperly installed, the floors were chipped and the roof leaked. Unfortunately, I had already closed on the apartment and had given the seller the full purchase price. The seller's attorney told me that I should have noticed these defects before closing—and the documents I signed waived any rights I may have had against the seller. Is the seller's attorney correct? Do I have any rightful claim against the seller for these conditions? —New Buyer, Manhattan

A According to Adam Leitman Bailey of the Law Firm of Adam Leitman Bailey, PC in Manhattan. First, you and your attorney should examine the contract of sale, the offering plan, and any other documents that may have been signed by the parties or provided in connection with the purchase. These documents may delineate the rights of the parties as a result of the defects and may require the landlord to repair or fix the items stated in your letter.”

“Moreover, in certain cases, New York statutory and case law have given buyers additional rights that may not have been negotiated in the contract of sale or the offering plan. Both the legislature and the highest court in New York State have recognized a common law housing merchant implied warranty which grants unit owners a remedy against sellers of newly constructed properties with defects due to a failure to construct a home in a skillful manner and from defective plumbing, electrical, heating, cooling and ventilation systems of the home.”

“New York law also protects buyers of newly constructed apartments by requiring residential building structures to at least meet a relevant specific standard of the building code and ensure that the newly constructed home is safe to reside. Unless contracted to between the parties, these protections do not extend to any defects which an examination should reveal, defective materials supplied by the builder subcontractor of the builder or goods sold incidentally which are included in the sale of the new home such as stoves, and dishwashers.”

“However, this same law permits sellers of condominium/cooperative buildings the option of drafting written contracts that modify or totally exclude the housing merchant implied warranty as long as it offers the buyers an express limited warranty.”

“In addition, this same statute only applies to condominium/cooperative structures that are five stories or less. Currently, there is a debate whether or not a six or more story condominium or -cooperative retains the housing merchant warranty and whether such a building can limit its liability by issuing a limited warranty.”

“Depending on the size of your building and by examining the documents negotiated between the parties, you should be able to ascertain your rights and remedies against a seller. You must promptly (and properly in accordance with your agreement) notify the seller and contractors that have issued you warranties of the defects to preserve your claims. Our law firm recommends that you should also document your claims by taking dated pictures or video. In most of the cases that our firm has been retained in these types of cases, the sellers immediately cured said defects or compensated the buyer. By using the above-mentioned guidelines, you should be able to facilitate the process.”

