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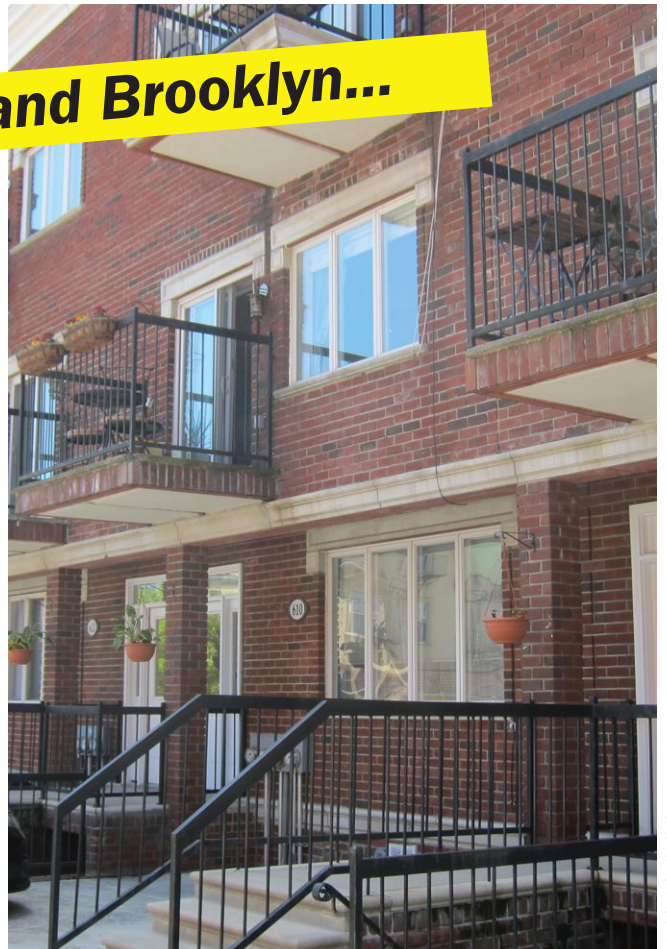
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PHOTOS: TOM SOTER

Perseverance Pays Off

By Bill Morris

IF YOU THINK THE HANGOVER from the last New York City real estate bubble is in the past, you need to re-read your William Faulkner. As the sage from Mississippi reminded us, the past is never dead. It's not even past.

He'll get no argument from countless New Yorkers who moved into new condos during the pre-recession building boom and learned, firsthand, that construction flaws from the past have a way of sticking around for a very long time. Here are the strategies two condo boards used to deal with major construction headaches – one a success story, the other a work in progress. Both have lessons for the boards of all new condominium buildings.

Crisis in Queens

In 2006, at the fever peak of the building boom, New York City's Department of Buildings issued 84,000 building permits. Unfortunately, there were just 208 inspectors on staff to make sure those buildings were put together in accordance with the prospectuses and the city's building code. You do the math. In such an overheated environment, every imaginable corner was bound to get cut – on materials, workmanship, and inspections.

In the spring of 2007, Omar Yousif bought his first home – an apartment in the 66-unit Queens Plaza Condominiums in Long Island City, within shouting distance of the Queensboro Bridge. It didn't take long for Yousif, an advertising creative director, to get acquainted with the math of the building boom.

"Right away, we started having leaks," he says. "And there were loose coping stones on the roof, there were problems with the façade, and some of the balconies were not level, which led to water damage."

By the end of his first year in the building, Yousif was on the eight-member board that consisted of five unit-

owners, with three seats for the sponsor. The unit-owners' initial approach was to tread softly.

"Since the building was new," Yousif says, "the board tried to make spot repairs of leaks. Technically, the sponsor is supposed to take care of those things."

But when buildings are improperly built, small problems have a tendency to get big. "The problems weren't life-

threatening," Yousif says, "but they forced us to burn through our reserves and raise common charges. Once we realized the sponsor was reluctant to pay for repairs, we hired a lawyer. I would recommend that everyone in a new building get

legal counsel because you're going to fight with the sponsor. It's part of the deal."

The board's next move was to hire an engineer, who did a thorough examination of the building and came back with some bad news.

"Essentially, the joints where the water pipes are tied together inside the walls were not done properly," Yousif says. "They were bursting. We had wet walls in a dozen apartments, and five apartments flooded, which required replacing floors."

Now we're talking about real money. But instead of going for the sponsor's jugular, the board shrewdly went a different route. Members had regular lunch meetings with the sponsor – without any lawyers present. They probed the sponsor; they pushed him. Then they met with their lawyer, Adam Leitman Bailey, founder of his eponymous firm, and reported the results of these conversations.

After regular board meetings broke up and the sponsor left, the unit-owners would huddle again. "We were developing a strategy for going after him," Yousif

Different condo strategies get to the heart of the fix.

COMBATING CONDO HELL

(top) Yousif at Queens Plaza condo in Queens and (bottom) Baldino and Israel at East 7th Street condo in Brooklyn.



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says. Some board members wanted to sue; others, like me, wanted to settle. Meanwhile, the money we were spending kept going up."

The board realized it was holding what Yousif calls a "bargaining chip." Under the original offering plan, the board was obliged to purchase the super's apartment from the sponsor, Shlomo Melkman, no later than two years after the building reached 50 percent occupancy. Although the apartment was listed at about \$250,000, the sponsor was demanding \$650,000 for the apartment and a late-payment penalty. "We figured very quickly that giving up that apartment was an easier pill for him to swallow than giving us a lot of cash," Yousif says.

And so in the summer of 2011, the sponsor, the board, and all the lawyers got together in a room. The board spelled out exactly what it wanted. That was when the members realized that the strategy of settling instead of suing had paid off. The sponsor agreed to make repairs to balconies and exterior stone and masonry; to pay \$150,000 cash for plumbing repairs and \$100,000 to cover legal and engineering fees; and, best of all, the sponsor handed over the deed to the super's apartment *for free*.

Today, nearly a year after the settlement was reached, most of the repairs are complete. The board has leased the super's condo and is using those funds to enhance the building's security system and improve the gym. All this without an assessment.

Yousif sums up the board's strategy: "Once you've lawyered up, I would tell boards to sit down with the sponsor without attorneys present. The minute the lawyers start going after each other, it's going to cost you money and it's going to get personal. It's a sport to them. Once everybody knows you have good representation, it's time to take a step back and be reasonable. Once they realize you're serious, that's a good time to have a human conversation. And you can't afford to hire a mediocre attorney, because you'll lose. You definitely need to document any physical defects in the building, and you're



VIDEO

Construction Defects: Advice from the Front Lines



years for breach of contract. Some offering plans specify time limits on other types of claims.)

“We couldn’t spend any money because we didn’t have any money,” Baldino says, “and the developer said the flooding was the city’s problem. Then the repairs stopped and the developer stopped returning my calls.”

In an e-mail, Reiner offered his view of events: “From start to finish, I did everything possible to help the condo owners. Every tradesman was fully paid. All the work was

fully inspected and signed off with the requisite city or governmental permits properly issued. When I received complaints, I brought back tradesmen to assess complaints, and they were ready to repair and replace whatever was needed. The condo did not grant them access to even assess the situation.”

“That’s bull,” says Michele Israel,

going to need professional engineers to do it. If you can afford it, do it now. The earlier, the better.”

Battle in Brooklyn

While Omar Yousif was moving into Queens Plaza Condominiums, a Brooklyn native named Peter Baldino became one of the first people to move into a new 15-unit condominium development in that borough’s Kensington section. The apartments were supposed to be ready for occupancy the previous fall, but construction kept falling behind schedule and certificates of occupancy were not ready until the spring.

“That was the first red flag,” recalls Baldino, who grew up in Red Hook and now works as a computer systems developer. “Then when I finally got into the building, I had what I consider not terribly troubling issues – little things hadn’t been delivered, like window screens and a pole for the skylight. And there were leaks in the shower.”

Soon, Baldino’s roof was leaking, and water was damaging his heating/air conditioning unit. The basements in all five buildings flooded. It became apparent that major appliances were improperly installed, there were no warranties on bathroom fixtures, and there were defects in sliding doors, insulation, and cornices.

By then, Baldino was on the condo’s first three-member board, and he routinely called on the

developer, Mendy Reiner, to make repairs. Reiner was still involved in the project because some apartments remained unsold, and the statute of limitations on rectifying construction defects had not yet lapsed. (Under New York State law, there are statutes of limitations on filing claims – up to three years from the first closing for negligent construction; up to six

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who married Baldino in 2008 and is now president of the condo board. "For instance, the roofer made a few patchwork repairs. Then he said he couldn't do any more. Then he stopped showing up. Why would anyone refuse to grant access to tradesmen?"

The architect, Bricolage Architecture & Design, would also prove problematic. Henry Radusky, one of the firm's principals, had surrendered his self-certification – the right to certify that design and construction comply with codes – for one year back in 2002 because of problems with 55 of the firm's jobs.

Meanwhile, the financially strapped board had hired a contractor, an engineer, and a lawyer to pursue remedies for the ongoing problems. The lawyer, Adam Leitman Bailey, has handled hundreds of similar cases. "In every case, we get an engineer to give the building a physical," Bailey says. These buildings, it turned out, were beyond sickly. A long punch list of necessary repairs was put together.

One of Bailey's other moves was to persuade the attorney general to subpoena Reiner. But the developer simply failed to respond to the subpoena. When asked what recourse the attorney general has when someone fails to respond to a subpoena, spokesperson Dani Lever said: "We cannot comment on potential or ongoing matters before this office."

James Samson, a partner in the law firm of Samson Fink & Dubow, says the attorney general can issue a contempt of court citation for failure to answer a subpoena. "But I've never seen it happen," he says. "The real problem is that condo unit-owners wait too long. The time to act is when the sponsor still owns units in the condo. You have to put the other party at risk – otherwise, they have no reason to settle. Once they've sold the units and gone, you'll get him next time. Maybe. The worst thing is they'll get told by the attorney general that they can never build or convert a building in New York again. That's not a whole lot of comfort."

Baldino is familiar with such

uncomforting reassurances. “The attorney general says if he [Reiner] applies for another building permit, they’ll get him. However, the organizations that are in place – the Department of Buildings, plumbing and electrical inspectors – did not do their jobs. As a result, it’s going to cost us hundreds of thousands of dollars to make repairs. They have no trouble writing you a \$150 parking ticket in this city, but they don’t inspect the cement work, the roof construction. You can’t assume, as a buyer, that anyone is going to look after you.”

Bailey, the attorney, thinks buyers need to do a better job of looking out for themselves. “People want to make as much money as possible,” he says, “and the builder knows that the consumer is not doing his job. You cannot buy into a newly constructed building without hiring an engineer first. How the hell can someone put most of their money into an investment – the biggest in their lives – and spend less time

[investigating it] than they take to buy a suit of clothes?”

But John Nakrosis, the architect hired by the board in 2010 to draw up a comprehensive repair plan, says Bailey’s solution has its limits. “Hiring an engineer [after the building is built] won’t tell you about a faulty foundation,” Nakrosis says. “The attorney general’s office needs to step up and enforce these things if the building is not built to code or in accordance with the prospectus filed with the attorney general. They’re the last resort. But the AG’s office is overwhelmed.”

Nakrosis adds that the building code was revised in 2008 at the bottom of the recession. “The new building code hasn’t been tested during a boom cycle. If the number of building permits doubles, will there be enough inspectors? What will happen with self-certification?”

Given that fact, Israel, the current board president, thinks people need to take matters into their own hands. “Before you move into a

new building,” she says, “do a little research about the builder, the architect, the construction company. Check to see if there are violations with the Department of Buildings. Then bring in an engineer or architect to inspect your apartment and the building. They can’t see behind walls, but they can see what’s visible – water leakage, a crooked cornice, cracks. They can also read blueprints and offering plans.”

With the wisdom gained through hard experience, she says the ideal strategy for a board faced with major construction problems is to first document the problems, and only then decide if it’s wiser to pursue legal remedies or try to negotiate a workable settlement with the sponsor.

“Even before going to a lawyer, hire an engineer or an architect,” she advises. “The thing to know if you’re going to go the legal route is that the attorney general is looking for really egregious stuff. Forget the broken microwave. Check to see what’s in the offering plan and what was actually built, and how it was built. If you have the money, probe it.”

Although there were countless missteps along the way – buyers didn’t do sufficient research before closing, the board hired a lawyer before hiring an engineer – hard work and about \$200,000 have helped turn this property around. The roofs have been replaced, missing backflow preventers have been installed, flood damage has been repaired. Still to come are waterproofing, balcony repairs, scraping and painting of metal trim, and sealing of basements. The board says the property is almost out of the woods.

“Buildings never get whole,” says Nakrosis, the architect. “There’s always maintenance to do. But we’ve done the major repairs, and now we’re at the point where we’re going to be tackling routine maintenance. That’s the best you can hope for.”

“We’re almost there,” Israel adds. “This building is going to be in 100 times better shape than it was when we moved in.”

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