

## NEWS

# Ruling puts developers between rock and hard place

BY ROLAND LI

A court ruling could force developers to return hundreds of millions of dollars in deposits to disgruntled buyers who got cold feet when the recession set in.

The Related Companies is obliged to return a \$510,000 deposit to two prospective buyers at the Brompton, at 205 East 85th Street, after a federal judge ruled to apply the Interstate Land Sales Full Disclosure Act (ILSA) to the case.

An obscure law originally conceived to regulate the sale of land plots in Florida, ISLA has become a popular tool for buyers with cold feet. In Related's case, buyers, Vasilis Bacolitsas and Sofia Nikolaidou had originally committed to a \$3.4 million apartment in 2008.

ILSA requires developments with 100 or more units to file records of sales in the city register, something that Related, along with most developers in the city, do not do.

An appeal is expected, but if the decision is upheld, it would give buyers up to three

years to back out of contracts without losing deposits.

It would also require sales to be registered for future developments, which would make individual sales into liens,

jeopardizing entire developments and scaring off lenders, according to attorneys.

"This leaves the sponsor between a rock and a hard place — either risk buyers having the right to renege on a contract without cause simply because economic conditions change or navigate new agreements with lenders who will not be amenable to having sales contracts recorded," said Howard Rubin, an attorney of Goetz Fitzpatrick LLP, who was not involved in the Related case, but supports the developer's cause.

"This broad interpretation of the applicability of a little used law could have significant impact on a sponsor's ability

**T**his broad interpretation of ... a little used law could have significant impact on a sponsor's ability to obtain financing.

— HOWARD RUBIN

to obtain financing at a time when the real estate industry is already facing significant challenges," added Rubin.

He said that developers could add a provision that buyers who record sales contracts be held responsible to costs related to the filing, if the ILSA is enforced.

"I think it can have a big impact," said Daniel Ross, a partner at Stroock & Stroock. Ross won a court case in the spring involving a similar ILSA case at Fifth on the Park in Harlem, representing developers Artimus Construction and Uptown Partners. In that case, the judge ruled in favor of

the developers because under 100 units had been sold at the property.

Ross said that buyers only began citing the ILSA in court cases in 2008.

Developers also won an ILSA case at One Hunters Point in Long Island City, Queens, but buyers won their first victory in August at 111 Fulton Street in a case against Africa Israel, after a judge ruled that they were eligible to receive a refund. A number of other ILSA cases are still being decided.

At the Arris Lofts in Long Island City, two buyers who have lived in a condo for two years are attempting to get a refund, and other affected buildings include the W Downtown Hotel & Residence and the Toren in Brooklyn.



HOWARD RUBIN



THE BROMPTON