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When luxury leaks

New high-end NYC condos are seeing an uptick in construction defects — from warped floors to fireproofing problems — and another wave of complaints could be coming

By [E.B. Solomont and Kathryn Brenzel](#) | May 01, 2018 11:00AM



(Illustrations by Nate Kitch)

Not long after closing on a \$28.5 million pad at 56 Leonard last spring, the new owner had a problem. More than one, actually.

The master bathroom allegedly had poor caulking, the deadbolts weren't working properly, and the apartment's oak floors were starting to warp. When the owner's contractor tore up the floor, he discovered three layers of wood under the oak — which appeared to have been laid “to conceal defects underneath,” [according to a lawsuit](#) filed in March.

In the suit, the plaintiff, an entity tied to New Jersey trucking mogul Ronald Dana accused the developers, Alexico Group and Hines, of failing to deliver on certain promises — such as soaring 14-foot ceilings, a private elevator, a breakfast bar and an electronic curtain system for the apartment's floor-to-ceiling windows, a marquee feature of the Jenga-like tower.

Brokers from Corcoran Sunshine Marketing Group, accused of deliberately misleading the buyer, were also named in the suit, which the developers described as “meritless.”

Construction defects, alleged or otherwise, are a hallmark of any building boom, and the last five years have been no exception. While there are no publicly available numbers on the frequency of such complaints, attorneys say latent defects usually spring up a year or so after buildings open. Many say they are already seeing an uptick, given that construction has been unrelenting since 2012. And they say it's safe to assume that another wave of lawsuits is about to hit.

“When the Navy orders an aircraft carrier or battleship, they take it on a run first to figure out if there’s anything wrong with it. It’s a shakedown cruise,” said Stuart Saft, who co-chairs Holland & Knight’s condo development and conversion team. “The same thing happens with buildings.”

At the same time, New York generally sees fewer of these cases than other states, Saft said. The primary reason for that is that the state attorney general requires sponsors to meticulously detail their projects in offering plans. Other states don’t have that level of guarantee on a project. Nonetheless, he estimated that 10 percent of new buildings — residential and otherwise — wind up in litigation.



“If you think in terms of the amount of buildings that get built in New York in such tight surroundings, it’s amazing that more things don’t go wrong,” he said.

Still, the pressure in today’s hypercompetitive market to make each building more iconic than the last — along with the often-conflicting imperative to save as much money as possible — can lead to a finished product that doesn’t quite match what’s promised in marketing materials.

Unlike during the financial crisis, when cash-strapped developers may have cut corners to avoid abandoning projects altogether, today’s developers are racing against the clock — and each other — to complete projects in a soft market that’s bracing for even more inventory.

Steve Sladkus, an attorney who has handled dozens of construction defect cases, said his caseload has picked up now that owners are moving into buildings constructed during the latest condo boom.

“With more buildings going up, that leaves room for more problems,” he said. “People are spending millions upon millions of dollars for apartments. They should rightly have an expectation that the apartment isn’t going to leak.”

Ironically, sponsors today are hyperfocused on quality as a selling point for their condos. And while there’s no correlation between building size and construction flaws, the durability of supertall condos is relatively untested.

“The architects and engineers have designed beautiful things, but no one has time-tested these buildings yet,” said Howard Zimmerman, founder of an architecture and engineering firm that bears his name.

He pointed out that prewar steel and cavity-wall buildings — all cutting-edge at one point — exhibited unique wear and tear only decades after they were constructed. He suggested that an 80-story tower is naturally subjected to more stress (think: wind and other elements) than a tower half its size.

“I’m sure they have tested these things in laboratories,” he said. But “no one really knows what the force of deterioration is going to be, and how much longer or shorter a life the buildings will have.”

When the toilet water boils

Over the years, the city’s most expensive real estate has not been spared from leaks, mold or cracked concrete.



In the early aughts, several multimillion-dollar homes at Zeckendorf Development's 515 Park Avenue — a limestone tower that former U.S. Sen. and New Jersey Gov. Jon Corzine once called home — had toxic mold due to allegedly faulty insulation.

And at 100 11th Avenue, the glassy tower designed by Pritzker winner Jean Nouvel, residents filed a slew of lawsuits in 2010 and 2011, alleging problems with cracking concrete and the complex mosaic of windows making up the building's curtain wall. (According to several lawsuits, cost-cutting by the developer, Cape Advisors, led to shoddy construction, an opinion Nouvel reportedly expressed publicly as well.) At one point, the project was on the verge of being halted before an investor group that included Howard Lorber, chairman of Douglas Elliman, injected \$30 million into the building. Still, more than half the buyers in contract reportedly tried to back out, and a number of sales fell through.

Another notorious example of the last cycle involved developer Shaya Boymelgreen, a prolific converter of industrial buildings into apartments, who was sued by multiple condo buyers complaining about leaky buildings with insufficient fireproofing and unfinished apartments.

Following an investigation by Attorney General Eric Schneiderman's office in 2016, Boymelgreen was banned from selling condos for two years. Part of the 2016 settlement also required him to fix problems at six condos in Brooklyn and Manhattan, including a 409-unit tower at 20 Pine Street.

The AG's office did not respond to requests for comment for this story, but in general, complaints range from leaks and dust to mold and fireproofing problems.

In one recent case that Sladkus handled, he said his client had boiling hot water in her toilets in a Queens apartment building. In another, the developer had to repour the concrete for every balcony in a Midtown building.

"With more buildings going up, that leaves room for more problems. People are spending millions upon millions of dollars for apartments. They should rightly have an expectation that the apartment isn't going to leak." ATTORNEY STEVE SLADKUS

Many times, Sladkus added, penthouses bear the brunt of the problems because they are most vulnerable to leaky roofs.

Not surprisingly, many developers attempt to settle disputes over

construction issues outside of court and avoid the negative publicity.

"Every building has problems. The good builders fix them," said attorney Adam Leitman Bailey, who noted that there's a direct correlation between the volume of construction and defect cases. "Every time I see how many new buildings we have, when I'm walking around the city, I look at every building as my future clients in some capacity or another."

Over the past few years, however, he said the AG's office has taken fewer cases than it once did, leaving buyers and owners with few choices outside the legal system.

When he can, he prefers to settle than to go to court because litigation can devalue the property. "Neither



side wants to be in the newspaper,” he said.

Flooding in a multibillion-dollar condo tower is, indeed, a surefire way to get headlines. Such was the case when tequila heir Juan Beckmann Vidal filed a lawsuit in January 2017 claiming a “catastrophic water flood” caused extensive damage to his unit at 432 Park Avenue, which went into contract for \$46.3 million. Water from a burst pipe seeped from the 86th floor to the 83rd, saturating multiple layers of sheetrock and insulation, according to the suit. In the complaint, Vidal demanded a refund on his \$11.6 million deposit.

But four months later, after a deluge of press coverage, the complaint was quietly dropped, though it’s not clear if Vidal and the developers, Harry Macklowe and CIM Group, reached an out-of-court agreement. Neither Vidal’s attorney nor attorneys for the developers returned requests for comment.

Sometimes, however, developers have an incentive to go to court.

“Sometimes the insurance kicks in once there’s a lawsuit,” said attorney Debra Guзов, founder of eponymous law firm Guзов LLC, who has seen an uptick in cases — though nowhere near as many as she saw during the financial crisis. “That brings people to the table.”

In a lawsuit that was filed in February 2017 and is now in discovery, the condo board at VE Equities’ 250 Bowery claims that several apartments in the 24-unit building were left uninhabitable after a pipe burst in 2016. The board blames improperly insulated pipes for the malfunction, and alleges that mold formed behind shoddy bathroom walls.

An attorney for VE Equities, Terrence Oved, called the board’s claims “unsubstantiated and unsupported,” and said the developer has filed a motion to dismiss the complaint.

“The board’s allegations are a shameful ploy to tarnish our clients’ reputations in a transparent attempt to extract an unwarranted and unfounded payout,” he said in a statement.

Sponsor advantage

The success of construction defect cases varies, but the cards are largely stacked in the developer’s favor.

Stephen Lasser, managing partner of the Lasser Law Group, noted that there’s not much room for buyers to negotiate the terms of a condo contract. Often the language is crafted to protect sponsors rather than individual owners — with shorter warranties and longer stretches for the developer to control the condo board, he said.

As a result, many cases are dismissed outright.

“There’s a disconnect between the sponsor’s obligation and what the purchasers are anticipating,” said Lasser, who represents both buyers and developers. “If someone is purchasing a condo for \$20 million, they are expecting perfection, but that’s not what’s necessarily required of the sponsor.”



432 Park Avenue

Many offering plans dictate that sales must close once a building receives a temporary certificate of occupancy. This means that when a buyer is moving in, it's often into an apartment that feels largely unfinished.

At the same time, the timeframe in which owners — at least those who've bought in larger buildings — are given to get developers to fix flaws is shrinking.

Under state law, owners in buildings of five stories or less have an “implied warranty,” with a tiered set of protections: The home must be free of “material defects” six years after the warranty expires, free of plumbing and electrical issues two years after and free of “defects due to a failure to have been constructed in a skillful manner” one year after.

But larger buildings don't have comparable protections — a developer can opt to offer them or not.

The condo offering plans for these larger projects sometimes include limited guarantees on the quality of construction — but developers are increasingly shortening the timeframes for these warranties, said Rachael Ratner, a partner with Schwartz Sladkus Reich Greenberg Atlas, who focuses on condo and co-op litigation.

In the last couple of years, she said, sponsors have been increasingly cutting these periods to six months, down from one year. Some are even excluding the warranties altogether, offering the unit purely “as is.”

This shortened opportunity to express grievances is further complicated by sponsors who maintain control of the board until a building is issued a permanent certificate of occupancy. Warranties tend to expire well before the sponsor hands over control, so litigation is often a condo board's best option for addressing problems — if an agreement can't be reached with the sponsor.



Individual owners have it even tougher than boards because they are even more reliant on warranty deadlines. The law, Ratner said, gives boards more leeway to pursue claims after a warranty lapses. But even if owners aren't watching the warranty, sometimes others are doing it for them.

Jay Badame, regional president of AECOM Tishman, said he's witnessed how outside parties may attempt to drum up complaints.

At his own condo building, engineering firms have slipped offers under the door to inspect his home for possible defects. Those offers usually come around the end of a warranty, said another construction professional, noting that engineering companies will knock on owners' doors. He referred to the process as a “racket,” since it's in everyone's interest to find something wrong.

“It's really a no-lose proposition to have someone kick the tires on the construction,” he said.

Marc Weissbach, CEO of construction consulting firm Vidaris, said that most disputes stem from a disconnect between the buyer's expectations and what's written in the offering plan.

“Every developer wants to save money,” he said. “That's normal supply-and-demand behavior.”

“No developer says, ‘Hey, I want to save money and in exchange for that, I want you to deliver a project that fails.’ Nobody says that.”

But sometimes developers will hire inexperienced subcontractors or order substandard materials to save money, he said. He said that because the construction market has been so busy in the past few years, the “talent pool is very shallow.” Subcontractors are stretched so thin that they are often rushed to complete work.

The situation is also being exacerbated by President Trump’s March approval of a 25 percent tax on steel and a 10 percent tax on aluminum imports from certain countries.

While the default for developers is to keep missteps private, the industry could benefit from sharing information on common mistakes, Weissbach said.

“When a plane crashes, everyone in the airline industry runs there and studies these things and figures out what’s wrong and makes sure everyone in the industry is aware of that,” he said. “In the construction industry, people do not share these problems. They try to keep it as quiet as they can.”

Avoiding stigma

In competitive markets like New York, developers are justifiably concerned with having their project labeled defective.

“If I’m looking to buy a condo and I Google the building, and I see they’re entrenched in litigation with the sponsors, it scares people away,” said Dylan Pichulik, CEO of XL Real Property Management, which manages hundreds of units in the city for investors.

The stench of poor construction and litigation can have a lasting effect, he added.

Take the Plaza, which the Elad Group converted to condos in 2006. Early owners complained of leaks and HVAC units blocking windows.

In 2008, Russian financier Andrei Vavilov — who bought a \$53.5 million triplex sight unseen — sued the developer, claiming he’d been the victim of a “classic bait-and-switch” and that his apartment looked more like an attic than a penthouse.

Between 2008 and 2015, the average sale price at the building shot up 19 percent, according to data from CityRealty. But that was far less than the 37 percent average jump at nearby buildings, including the Metropolitan Tower, Park Imperial, Essex House, Trump Parc and Trump Park Avenue.

Jonathan Miller, of appraisal firm Miller Samuel, said that in a tight market, it doesn’t take quite as long for the stigma of litigation to die down.

Zimmerman said that over the past couple of years, developers have been hiring him preemptively to spot defects before construction is complete.

But even in well-constructed buildings, problems can crop up.



*55 West 17th Street*

“As the building settles, sometimes you might have cosmetic cracks,” said David Von Spreckelsen, president of Toll Brothers City Living’s New York division. Toll, he added, has a warranty department that tries to quickly resolve complaints.

“The competition is so tough in New York City, everyone needs to be performing at the highest level and putting forward their best game,” he said. “If not, they get a reputation as such, and people aren’t going to buy from them.”

Of course, even the best-laid plans can go sideways.

In April, for example, a small fire broke out on the 88th floor of 432 Park, causing water damage on three floors. “The fire was no big deal, but it set off the sprinkler system,” said a source. “It was bad luck, to be honest.”

At another Midtown building, candles lit by a resident triggered the sprinkler system, and when the sponsor’s managing agent couldn’t find the shut-off valve, water soaked 17 floors of the high-rise.

One of Toll’s buildings — 55 West 17th Street — is also dealing with fallout from flooding caused by a pipe that froze and burst, damaging several apartments. Toll declined to comment on that incident, but sources said a contractor hired by the penthouse owner accidentally left a pipe exposed during a freezing spell. “What happens with these leaks is, it’s gravity,” said one source. “It ends up being a whole line of apartments.”

In that case, sources speculated that the penthouse owner’s insurance would pay. But in some cases, condo owners can face assessments.

In 2015 and 2016, for example, the Setai Wall Street board assessed owners for \$3 million to pay for repairs.

XL’s Pichulik said one of his clients, who owns a condo at 80 Broadway in Williamsburg, was hit with three assessments of more than \$100,000 each to pay for façade work related to the conversion of a warehouse into condos. By the third assessment, Pichulik said, his client was livid.

“From what I understand, the work wasn’t done to the highest of standards,” Pichulik said. “As they peeled back the layers of the façade, they realized they had more and more work.”

Lately, some owners have just tried to cut their losses and sell.

Nicole Gary, an agent at Keller Williams NYC, represented a buyer of a \$2.2 million condo in Gramercy a year and half ago.

The owner is now looking to sell because the developer has refused to fix punch-list items and make repairs. She said even before her client closed on the unit, the doors and balconies weren’t finished, the floor was scratched and the building amenities were incomplete.

“It looked like the developer ran out of money,” said Gary, adding that she urged the client not to close. But the client’s patience has since worn thin. “I just talked to him last week,” she said. “He’s like, ‘I need out.’”