

Squamish estuary project stuck in financial morass

BY DERRICK PENNER, VANCOUVER SUN AUGUST 28, 2009

The Coastal Village development, which was to rise up as a 240-unit urban village on Squamish's formerly industrial waterfront, has crash-landed in a financial mire in the Squamish River estuary.

The developer's financier, the Bank of Montreal, stopped paying advances in June on a \$38-million construction loan to Coastal Village's second and third phases, forcing Pointe of View (Squamish) Inc. to seek court protection from its creditors.

That move has frozen 105 of the project's pre-sale buyers into their contracts, barring them from trying to opt out of their purchases and take their deposits back while Pointe of View attempts to refinance the development.

Pointe of View (Squamish) was formed as a joint venture between Calgary-based Pointe of View Developments and Bel-Tar Holdings Ltd., the company of local developer Thomas Ivanore.

The Calgary partner in the venture was "in the process of rearranging financing," said president and COO Brian Stoddard, adding that construction will still proceed and be completed.

"We just had cost overruns there," Stoddard said, "so it's going to require that the thing be refinanced." He said that should take three to four weeks.

The problems lay primarily in remediating Coastal Village's challenging 2.4-hectare site, essentially contaminated marsh land that required some \$7.5 million in work, Stoddard said.

"It's at sea level and it was a difficult site to get up and running," he said.

Stoddard said buyers' contracts were still valid and the developer vowed to "build what they purchased [in their pre-sale agreements]," with the developer absorbing the cost increases.

However, Vancouver lawyer Bryan Baynham believes the buyers aren't getting fair treatment.

Baynham has been retained by five of the buyers in Coastal Village's Phase II, a 35-unit townhouse complex, who are attempting to block the developer's court protection under the Companies Creditors Arrangement Act (CCAA).

Details of the case are revealed in court documents filed in the case including the developer's petition seeking protection, court orders and reports by the court-appointed monitor of the proceedings, the Bowra Group.

It is a situation similar to the one faced by pre-sale buyers in the luxury Jameson House project in downtown Vancouver when that development lost its financing and sought court protection while it reorganized.

A protection order under CCAA includes a stay of proceedings that bars a company's creditors, suppliers, contractors and any other parties from taking action against the company until it emerges from the court-supervised restructuring process.

In the case of Coastal Village, this includes pre-sale buyers with contracts to purchase homes in the development, 32 of whom, just prior to the application for court protection, were in a position to cancel their contracts and take their deposit money back.

The developer completed Coastal Village's Phase I, a 19-unit townhouse complex, last year.

The Bank of Montreal stopped advances on its construction loan for Phase II, the townhouses and Phase III, an 82-unit midrise condominium, in which 73 buyers had signed contracts with construction well underway.

Coastal Village's Phase IV is intended to be a second 82-unit midrise building.

The developer started selling it in July of 2008, attracting 32 buyers, but failed to secure financing in time.

Under B.C. real-estate marketing laws, that required Pointe of View (Squamish) to stop selling units in the building, which it did April 23. Buyers would have been in a position to rescind their contracts after July 18, except for the developer's subsequent application for court protection.

In its petition seeking court protection, the developer noted that the rescission right expires if the developer can arrange financing.

"In my view, there is a grave injustice being done [to the pre-sale buyers]," Baynham said. "All they had to do was ask for their money back and they would get their money back. Now, all of a sudden, zap, their rights are taken away."

Baynham said developers in this and other cases are using the CCAA to get around consumer protections in real-estate marketing rules to liquidate projects that have run into financial difficulties.

Baynham has filed an application in B.C. Supreme Court on behalf of his clients asking for Pointe of View (Squamish)'s court protection to be set aside. He also wants to be named representative counsel for all pre-sale buyers in the complex who want to sign on.

Baynham said that application will be considered during a B.C. Supreme Court hearing on Monday when the developer will seek an extension of its court protection.

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