

January 29, 2006
National Perspectives

The Disappearing Las Vegas Condos

By **FRED A. BERNSTEIN**

THREE weeks ago, Eli Verdnikov, an engineer in Los Gatos, Calif., received a letter saying that the apartment building he planned to retire to — Icon Las Vegas — would not be built. In the envelope was a check for \$73,672.81, the 10 percent deposit Mr. Verdnikov had paid, plus interest.

The developer of the building, Related Las Vegas, a partnership between two large and well-known companies, expected Mr. Verdnikov to accept the refund as payment in full. (Its letter explained that, by depositing the check, Mr. Verdnikov would be waiving any further rights.)

But Mr. Verdnikov wants more than the \$73,672.81. Since he agreed in May 2005 to buy the 1,400-square-foot, two-bedroom apartment near the Las Vegas Strip for \$728,900, its value, he says, has increased. "To purchase something similar, we would need to pay \$200,000 more," said Mr. Verdnikov, who has been looking for a new apartment with his girlfriend, Gitty Stone. So Mr. Verdnikov is suing for the gain he would have realized if the apartment had been built.

"He deserves to get the benefit of the bargain," said Will Kemp, a lawyer with Harrison, Kemp & Jones in Las Vegas, who is representing Mr. Verdnikov and a dozen other Icon buyers.

As the market for high-end condos levels off, more and more people may find themselves in Mr. Verdnikov's position: with contracts to buy condos that will never be built. And some hope to recover the profits they believe they would have made.

In Las Vegas alone, developers have canceled at least four other buildings in the last year, including one called Aqua Blue that was to contain a [Michael Jordan](#) health club. Dozens of other buildings, in which units have been sold, may never break ground, said Brian Gordon, a principal at Applied Analysis, a Las Vegas consulting firm. Mr. Gordon said there are 97 condo projects in the works in greater Las Vegas, representing more than 52,000 units.

"I don't think anyone would expect that all these projects will move forward," Mr. Gordon said. He predicted that fewer than half of them would be built in the next five years. Of course, if the market cools enough, some buyers may be happy to get their deposits back.

The pitfalls for condo buyers may be particularly deep in and around Las Vegas, where construction prices have been skyrocketing. Mr. Gordon says some of his clients who are developers have reported a 30 percent increase in the cost of labor and materials in the last year alone. That means that developers who presell apartments may find construction costs wiping out profits even before they break ground.

In the letter to Mr. Verdnikov and the other buyers, Related Las Vegas said that the rise in labor and material costs had affected the viability of the project.

Still, the Icon cancellation came as a surprise, in part because its developer is a partnership of two giants: the Related Group of **Florida**, which calls itself the nation's leading condo developer, headed by Jorge Perez, and the Related Companies, headed by Stephen M. Ross, the developer of the Time Warner Center in **Manhattan**. Icon's two 48-story towers were expected to be completed in 2007 and 2008.

Mr. Perez was out of the country and could not be reached for comment, a company spokesman said. Reached on his cellphone, Martin Burger, the president of Related Las Vegas, hung up.

In contrast to its current silence, "the company relied heavily on its own reputation in marketing the building," said David Ezra, owner of Ezra International Realty, which sold some 60 units in the building. He added that he thought the excuse of higher construction costs "might work for a first-time developer, but it doesn't work for Related."

Mr. Verdnikov, who is 62 and plans to retire just around the time Icon would have been finished, said he walked away from another project to buy from Related. "We switched it because of their very heavy advertising," he said. "They convinced us they were better."

But whether Mr. Verdnikov — or any buyer — can receive more than a refund of his deposit depends on a number of factors. Some contracts for unbuilt condos allow the seller to back out if it cannot obtain proper financing (a phrase sometimes so vague as to constitute a get-out-of-deal-free card, lawyers say). The contracts for Icon Las Vegas contained no such financing contingency. Related did claim the right to back out if it failed to sell at least half of the units in the project. But observers say the company far exceeded the 50 percent goal, and statements made last year by Mr. Burger support that view.

Other contracts specifically limit damages for cancellation to the amount of the deposit, or to that amount plus interest. Such provisions are generally enforceable, said Eric Glazer, a Hallandale, Fla., lawyer who often represents condo buyers. Someone planning to buy a condo that hasn't been built yet might try to delete that clause from the contract of sale. But in most cases, condo developers will not negotiate provisions. "They have a standard contract; it's take it or leave it," Mr. Glazer said.

The contract at Icon included no limitation on damages, Mr. Kemp said, which is why he believes his clients could win "benefit of the bargain" if the case goes to court. "It's a standard measure of damages in contract law," he said, though he said he had not seen it applied in a case involving an unbuilt condo building.

Mr. Kemp is also representing more than 100 buyers of units in a Las Vegas development called Krystal Sands. In that case, the developer chose to sell the land the building was going to be built on, and buyers received their deposits back. Again, Mr. Kemp is seeking the "benefit of the bargain" for his clients. (A lawyer for the developer, Cam Ferenbach, said that he thought the company had a good defense, but said, "I don't want to try the case in the press.")

In Nevada, condo developers generally take "reservations" for unbuilt units. Then they trade the reservations, which are nonbinding, for signed contracts. At Icon, it was Related that made the decision to convert reservations to contracts last summer, Mr. Kemp said. In the suits he has filed against Related, he charges not only breach of contract, but "fraudulent misrepresentation," because, he said, "they continued to reassure these people that they were going to build, and then they didn't build."

Real estate brokers who sold units in canceled projects may also have grounds for a lawsuit, and Mr. Ezra, for one, says he is considering legal action. Mr. Ezra said the 60 units his firm sold at Icon were worth about \$50 million. Ezra International Realty stood to receive about \$1.5 million in commissions

from Related Las Vegas, which pays brokers 3 percent commissions on each sale. Mr. Ezra said he has not received any offer of compensation from Related, which he said he earned because he produced "ready, willing, and able" buyers.

Related could suffer damage to its reputation. David J. Wine, the vice chairman of the Related Companies, was clearly concerned about the fallout as news of the Las Vegas cancellation spread. Reached by telephone in New York, Mr. Wine said: "The Related name is a powerful one. We have an incredible reputation for delivering to our customers. I think we can say that, over all, this is a very unusual situation, and that our followers will appreciate, in the long run, our being candid and straightforward, because that is the kind of company we are."

Mr. Wine said that, in Nevada, "projects are marketed and sold at the earliest stages of anywhere in the country."

In many other states, including New York, to sell apartments, "you have to have a building permit," Mr. Wine said. That means the project is bound to be well under way by the time buyers put down deposits. As a result, he said of the Icon cancellation, "this would never happen in New York."