

Claw Back Clauses: Are pre-sale apartments a new stock market: East Central Project?

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Are our habitable multi-dwelling apartments becoming the instruments of a quasi- stock market? The recent example of the East Central project in Surry Hills is compelling evidence to this effect:

<http://www.domain.com.au/news/multiple-class-actions-brewing-against-sunset-clawback-developers-20151009-gk3ewp/>

To quote:

"After an investigation by Domain into boutique Surry Hills block East Central where seven contracts were rescinded by the developer Ash Samadi and most of the units were then resold

for up to 50 per cent more, it's been revealed that at least three other new buildings in Sydney are also embroiled in similar controversy". Domain.

Many apartment projects are created through pre-sale agreements which have what are called sunset clauses. One intention is to ensure that the developer actually hands over the keys to the new 'real' apartment within a reasonable period. In this case the clause which is referred to as a 'claw back' clause allows the developer to rescind the contract and re-sell it to the open market after a certain period.

This means that the intention may never have been to honour the actual hand over of the apartments to the 'originating pre-sale buyer' but to use them as a stepping stone into a new market window. This in turn resembles the mechanism of a stock market in slow motion.

Some will also remember World Square where the pre-sale contract buyers were re-selling their pre-sale contracts on the open market. In that case, this was to the buyer's benefit however in both these cases we are not dealing with commoditised, securitised stock

market shares but with habitable apartments.

The lawyers will say to unwitting pre-sale buyers 'read your contract and get a decent lawyer' but there is something fundamentally wrong with this concept and the actual original intentions appear to be that the developer never really intended to honour the original undertakings, and in fact intended to on-sell on a clawback (or least keep his/her options open)..

What a world! For those who are this evening waking at 4am to line up with the other hundreds of unsuspecting buyers on the streets of the pre-sale offices of our city, beware the claw-back clause. You might just sleep better through the whole, long, contract period leading up to settlement on your beautiful new dream apartment. The one that gives you an almost impossible leg onto the property ladder of the Sydney apartment market.

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