

Broken dreams: They signed on to buy condos in Hintonburg. Almost three years and many delays later, the units were put up for rent

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Carlo Cassone stands in front of 12 Hamilton Ave. in Ottawa Wednesday July 22, 2020. He thought it would be a place he would call home. PHOTO BY TONY CALDWELL /Postmedia

In March 2017, Carlo Cassone put down a \$24,000 deposit and signed a contract to buy a condo in a building that would go up in Hintonburg.

The 25-unit “boutique” Parkdale Market Lofts condo building featured open-concept New York-style lofts “geared towards empty nesters and millennials looking to live in an affordable place close to everything,” according to the developer, Surface Developments.

The project at 12 Hamilton Ave. was in a hip location across from the Parkdale Market. The price was attractive — units were listed as low as \$217,900 — and Surface promised low condo fees.

“It was a pretty exciting time for me. It was going to be my first place,” said Cassone, now 27, who decided to stay at home and save more money for a down payment. He chose a \$234,900 one-bedroom unit and deposited about \$5,000 more for upgrades.

Greg Dillon, now 28, was also impressed with what he saw. Surface said it would custom-design the units for the buyers. If Surface didn’t have a fixture or finish available in its design centre, the developers would source it for the buyer.

“Their marketing is phenomenal,” said Dillon. “Their design centre is flawless. You had more choices than anywhere else in the city.”

Dillon and his fiancée chose a one-bedroom unit at \$235,900, with an additional \$15,000 for upgrades. They put down \$23,590 to secure the unit.

According to a press release from Surface dated April 5, 2017, the project had defied all odds in a then-stagnant condo market and sold out in a day.

“I expected a good response, but we had to start cancelling appointments with potential buyers the afternoon we launched; that’s how quickly the units sold, a lot of people were left disappointed,” said Surface’s president and founder, Jakub Ulak, in the press release.



Greg Dillon stands in front of 12 Hamilton Ave. in Ottawa. PHOTO BY TONY CALDWELL /Postmedia

Friends had warned Cassone to expect hiccups in the condo-building schedule. And indeed there were. But construction delays were all dismissed by Surface, which supplied buyers with chirpy updates and photos of crews hard at work.

In December 2017, Dillon got an email from Surface assuring him that things would improve.

“We are committed to delivering an incredible product that you will fall in love with the day you move in.”

Two years later, buyers learned the project was being cancelled. They then watched in disbelief as construction continued after the project was cancelled — and the units were put up for rent with the building renamed The Foundry.

“I found it ironic that it was finished and occupied in April,” said Dillon. April was when he had been slated to move into his new home.

Buying a condo before construction has its advantages, said Denise Lash, a Toronto lawyer who often speaks and writes on condo legal issues.

“It’s a great investment because you can buy something and two years later it has appreciated in value,” she said.

On the negative side, there’s risk. Often an agreement to purchase includes a condition that a certain percentage of units must be sold in a given window of time.

But cancelling a condo project usually happens before shovels even hit the ground, said Lash. Cancelling a project and then continuing with construction and renting it out? That’s unusual, she said. In previous court cases involving cancelled projects, developers had to demonstrate that they had taken steps in reasonable and good faith to satisfy the conditions in the purchase agreement.

The Parkdale Market Lofts saga unspooled over the space of almost three years. There were delays in 2017. In 2018, there were upbeat updates to buyers from Surface. The project had a building permit, demolition had been completed and construction had moved ahead.

In November 2018 came a hint of uncertainty. The walls were going up, the floors were being installed and the stairs would be installed within a week, but an email to buyers also noted that the city was going through a construction boom.

“While this is great for the value of your condo, it is a bit of a double-edged sword. There is a skilled labour shortage in the city, trades are overwhelmed by the amount of work available, which sadly means will (sic) be delayed in constructing Parkdale Market Lofts,” warned Surface.

In January 2019, Surface said construction was “moving along really well. The third-floor is almost framed and we are getting ready to pour the fourth-floor slab. Even though we are only halfway up the building the views are already proving to be fantastic!”

In February 2019, Dillon received an email that suggested buyers were getting frustrated over delays — but Surface said it was willing to return deposits.

“Our priority remains your satisfaction even if it means allowing you to explore alternative options,” said the email.

“If you would like us to consider offering you a release from your purchase with a full refund on your deposit and upgrades, please reach out to us at your earliest convenience and we will see if it is something that we can accommodate for you. This is being offered on a limited and first come first serve basis and we reserve the right to deny any request for release.”

As the months went by, good news trickled in. On June 13, 2019, buyers received a list of completed construction. On June 26, an email to Dillon told him he would be able to watch the Canada Day fireworks from his rooftop deck in 2020, but also revised the tentative occupancy date to Oct. 15.

On July 12, 2019, Surface said the project would be roof tight within two weeks. An Aug. 2 email said construction was progressing, “albeit slower than we had hoped.”

Soon after, the occupancy date was revised to Dec. 15.

Dillon was getting increasingly frustrated over emails that started out promising exciting news and ending with discouraging news. Dillon had broken the lease on his apartment over a year previously, thinking he would be in his new condo soon. He asked Surface if the project was at risk.

“We are struggling to keep trades on the site due to the competitive nature of the market,” said a response from Surface’s comptroller, Dan Nixon.

“We signed contracts, and have had trades abandon them due to some of the delays we’ve run into. This means they’ve left the project for bigger value contracts elsewhere, so we now have to try to find contractors who can come in and do the work for us at a cost that makes sense, a very tough task in this market.”

The occupancy date was later revised to April 30, 2020.

“When the project was sold it was released below market value and unfortunately since that time the costs of construction have increased from 30 to 40 per cent,” said Ulak in an email to Dillon.

“These increases have been driven principally by labour shortages, commodity prices, the trade war with the US, and tariffs. Cost increases, along with delays by some trades in completing their work have allowed other contracted trades to walk away from their obligations to the project. The result has been a spiral of more delays and further cost escalation. This has put us in an unfortunate position where the project ran out of financing.”

Ulak said Surface had been trying for the last few months to secure additional sources of funding, “but are finding it challenging to find someone willing to risk lending money on a project that is financially insolvent. While we will keep trying it is possible that we may have no choice but to cancel the project.”

However, the buyers' deposits were safe, Ulak said. "You may continue to wait in case we are successful in securing some form of financing that would allow us to continue with the project but if instead, you'd like to receive your deposit and upgrades back now, we can send you the forms and get your funds back to you within the next 14 days to ensure your money is not at risk."

Cassone started to get worried his deposit might be in some danger and felt pressured to take his money back.

"I was fearful they would keep my money," he said. "My lawyer said they could cancel the contract. It was like a slap in the face."

Dillon was also shocked. He had been in the neighbourhood and thought the building looked to be 70 to 80 per cent complete.

"You obviously don't just leave a near-complete building standing vacant in prime real-estate, so what is the plan?" he said in an email to Surface.

Dillon also noted that condo units in Hintonburg had increased significantly in cost since he had signed on. Would he be compensated at fair market value? he asked Ulak.

In response, Ulak apologized and said he took full responsibility. There was no deadline for buyers to request refunds and the money would be refunded to him automatically if the project was cancelled.

"Getting my deposit back is one thing, but I would have lost all equity gains, legal fees, and there's nothing comparable on the market at the value I entered at," responded Dillon on Nov. 29.

He had heard the building was to be converted to a rental and asked Ulak if this was true.

"The options we have for the building are to do nothing which would bankrupt the project, find a lending partner willing to inject additional capital into the project, or to bail it out as a rental," Ulak responded on Dec 2.

Dillon wanted to know if he could pay more to secure the unit. "How far away are we from what you need to keep this afloat?"

Surface had explored all these options "and some of them would have been viable earlier on. Unfortunately we are now almost \$3,000,000 over budget," Ulak replied.

It was about \$100,000 a unit. "It's an insurmountable sum. We'll keep seeking options but it's unlikely we'll find any solutions," Ulak told Dillon.

And how could completing a rental build be a success if it could not go forward as a condo building? Dillon wanted to know.

“The primary difference is that there is sufficient revenue in (the rental) project to support its costs,” Ulak replied.

“That unfortunately turned out not to be the case with 12 Hamilton. Everyone is free to wait as long as they want but once we exhaust our options we’ll be forced to cancel the project. At that point your deposits will automatically be returned to you.”

Dillon declined to sign the release. Two cheques were forwarded to his lawyer anyway.

Westboro Lofts, another Surface Developments condo project, was also cancelled in December, according to Tarion, which provides new home warranties for Ontario homes, including condos.

In an email sent in response to questions from this newspaper, Ulak said there were “significant and unforeseen” cost escalations throughout the course of construction.

“Once we exceeded our budget and had no additional sources of financing we began injecting our own capital into the project to ensure its completion. We allocated all the capital that we had available and were prepared to lose well over \$1 million in order to ensure the project was finished.”

Ulak said construction costs continued to escalate well beyond this and the only option Surface had available was to find additional sources of financing.

“The only way to get a bank to provide additional financing was to increase revenues. No bank will lend you money if it is certain that you have no ability to pay them back. No one will give you \$10 million if you’re showing \$6 million in revenues,” he said.

“This was the unfortunate challenge that we faced and the only way to provide those additional revenues was to convert the building to a rental. Today’s rental rates, as opposed to selling prices from three years ago, were sufficient enough to provide a valuation that was adequate for our lender. If this was kept as a condominium the project would have gone bankrupt and our purchasers were certain to not receive their units. We had absolutely no option whatsoever to continue the project as a condominium.”

In Ontario, a buyer’s deposit is protected and returned to the purchaser if a condo project fails, triggered by a condition in the purchase and sale agreement. In the case of Parkdale Market Lofts, there were three conditions — unconditional sales of at least 80 per cent by Aug. 20, 2017; site plan approval from the city and confirmation of financing “on terms satisfactory to the vendor at its sole discretion.”

The buyers got their money back, but it was cold comfort as they had to pay the opportunity cost of not buying something else.

The average price of an apartment condo in Ottawa was \$269,000 in 2017. As of June 2020, it was \$367,137.

For Dillon, the lesson learned is that if the price is too good to be true, it probably is.

“There was a certain sexiness to the boutique aspect (of the project),” he said. “But with that comes the risk that they’re not as established.”

Dillon has purchased a unit in a stacked townhouse that will be ready in April 2022. He has found himself in the midst of a hot housing market, where prices have increased significantly.

“Their actions put us in a vulnerable position,” he said.

By the time he gets in the door almost two years from now, his home-buying journey will have lasted five years.

Cassone also ended up buying somewhere else.

“I’m still happy to be in the market. But it was a tough pill to swallow,” he said. “I just don’t want other people to end up in the same situation.”

“A change in intended tenure is not a rare occurrence,” said city planner Allison Hamlin. “There are other examples of planning approvals for developments originally planned to be condominiums instead being constructed as rental buildings.”

Ulak called the circumstances “a tragic situation” that has had negative consequences for Surface, the purchasers and himself personally.

“I’m immensely regretful that the project could not be delivered as intended and sympathize with the fact that our purchasers have been unduly affected.”

Both Cassone and Dillon have spoken to their lawyers and learned that pursuing the matter in the courts would be expensive. Cassone has contemplated the possibility of a class action lawsuit.

“I feel like there are no real consequences for their actions,” said Dillon. “It was a traumatic experience. It was like a dream out there. It felt like mourning a loss.”