

Ontario regulator moves to strip builder of its licence

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A proposal by Ontario's Home Construction Regulatory Authority (HCRA) to strip away its licence to sell and build new homes is being called "incredibly disappointing, cursory and arbitrary" by a Toronto-area condominium developer, while critics of the HCRA argue it still isn't doing enough to protect consumers.

On Aug. 25 the HCRA filed a notice of proposal with Ontario's Licence Appeal Tribunal calling out the Adi Development group and a handful of companies under its umbrella for "unethical" practices including allegedly cancelling agreements of purchase and sale unless buyers agreed to large increases in the contracted price of an unbuilt condo. It's the first time the relatively new agency – which launched in 2021 – has attempted to revoke an active builder's licence, though it says it has opposed renewals in the past.

"The HCRA had made it clear that bad actors in the industry will face severe consequences as a result of the measures introduced by the Ontario government," HCRA said in a statement to The Globe and Mail.

Allegations of misconduct by Adi began surfacing in March, 2022, when buyers complained that Adi asked them to increase their agreed purchase price for apartments in its Nautique project on Burlington, Ont.'s waterfront, sometimes by hundreds of thousands of dollars. Customers say those who refused had their contracts cancelled.

The regulator has proposed to let Adi finish three buildings it has begun construction on while revoking a licence for six other proposed sites. The proposal is being appealed by Adi.

"We were given no notice of the impending proposal, no understanding of the grounds or documentation for their allegations, and no opportunity to respond or clarify issues before HCRA made the decision to issue a notice that contained very serious allegations and would have very serious consequences for Adi," said Tariq Adi, president and CEO of Adi Developments, in a written statement in response to questions from The Globe and Mail. He went on to say the reputational damage to the company has been "severe."

"It seems HCRA has gotten some teeth, they are making the point of showing they are on the ball if there's issues," said Pauline Lierman, vice-president of market research with real estate analysts Zonda Urban. Mr. Lierman said the proposal has been the subject of much speculation in the building industry, but it's unclear what impact it will have on either Adi or the industry at large.

Even buyers who agreed to the March price increases are worried about what will happen to their deposits if HCRA's proposal should succeed. "Why would I give more

money to a sinking ship? What happens if they go bankrupt,” asked Nautique buyer Martin Leszczynski. “I’ve already invested another \$100,000. I’m legally [bound]. I signed a new contract and I kind of feel duped by it.”

In its notice of proposal (NOP), the HCRA said one of its inspectors “requested copies of all agreements of purchase and sale for the 240 units in the Nautique Project,” and goes on to say that even after a second request not all of the agreements of purchase and sale (APS) documents for the building at 374 Martha St., Burlington, Ont., under the ownership of Adi Morgan Developments (Lakeshore) Inc., were provided. The NOP goes on to claim “HCRA discovered that Lakeshore had provided altered versions of purchase agreements. These purchase agreements had different dates on key termination clauses from the copies provided by the purchasers.”

Adi denies that it held back any documents, and further denies it altered any APS documents.

“We have no idea what forms the basis of this allegation; the HCRA has provided no particulars,” Mr. Adi said.

Hisham Alsharif said he was one of the purchasers who complained to the HCRA that his APS had been altered. “I thought until maybe last week, I thought my case was a unicorn case, I came to know there are others,” he said.

Mr. Alsharif said he signed a contract in 2016 to purchase a one-bedroom-plus-den unit in the Nautique building for about \$340,000. As the years passed Adi kept him updated on its struggles to obtain planning permission: “I knew Burlington was giving them a hard time. ... I knew there was a chance it might get cancelled,” he said.

Nevertheless, in 2019 he says he was called in to Adi’s office because they wanted to amend the contract to change the delivery date to 2020. “I ran it by my lawyer and it was straightforward; they only changed the date of delivery. I signed it, I got my copy and put it in my safe,” he said.

Then in March, 2022, Mr. Alsharif said he received another call from Adi, demanding that he accept a dramatic increase of the price of his condo to more than \$618,000. The alternative was his contract would be cancelled and his deposit returned.

Referring to his copy of his contract he objected that the last date Adi was able to cancel was two years before in March, 2020, and Mr. Alsharif didn’t accept the explanation of a clerical error on a legally binding contract: “I don’t care if they forgot, I’m talking to my lawyer.

“A week later, my lawyer reached out to Adi to get their copy of the contract and we saw a totally different contract. ... I immediately filed the complaint [with HCRA],” he said. He argues he would never have signed anything like the contract Adi claimed he signed: “If you look at the new contract, it has two clauses; the right to cancel until 2023, and

they can delay handing over the project until 2029. I can't imagine myself waiting 13 years for a condo."

The allegations made by Mr. Alsharif and the HCRA have not been proven in court.

Karen Somerville, president of Canadians for Properly Built Homes, said the real issue is that HCRA has been too slow to act. The home-building regulator powers were removed from Tarion in 2019 (up until that point Tarion was both the regulator and a partner with builders with its new home warranty program), after years of Ms. Somerville and other activists advocating for change in the industry.

"A year and a half post their official door opening, I struggle to say it's a good first step," said Ms. Somerville. "Why haven't they ramped up much faster? They had \$7.8-million surplus in the first year, we've asked why haven't they added more staff. Its annual report talks about investigating only 10 per cent of 800 consumer complaints, ... It's pretty surreal for many of us watching this."