

A baffling 'loophole': He was denied a warranty for his new house because its alleged problems left it too incomplete to qualify

New homes built in Ontario are provided with a warranty by the builder that is backstopped by Tarion. But for certain homes, there is a catch.

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Kyrollos Maseh is fighting a decision by Tarion that his home is not eligible for a warranty because the alleged deficiencies make it too incomplete to qualify.

Nick Lachance Toronto Star

By [Sheila Wang](#) Investigative Reporter

Kyrollos Maseh was relieved to learn he qualified for compensation after he says his contractor left his newly built house riddled with defects.

Tarion, [Ontario's protection agency](#) for new home buyers, had been reviewing Maseh's case for a year. In May, the agency told him that his custom home in North York was covered by standard [warranties](#).

But two months later, as the homeowner expected to receive his first payout, Tarion told him he was not entitled to the warranties because his builder hadn't done enough work on the house.

The decision left Maseh in a bewildering scenario: He is seeking protection from [Tarion](#) for the deficiencies he says were left by his contractor, but the house doesn't meet the threshold to qualify for a warranty because the deficiencies left it too incomplete.

"I felt shocked and I felt betrayed," said Maseh, who is now appealing Tarion's decision at the Licence Appeal Tribunal (LAT). "And I have to fight the institution that's supposed to be protecting me."

A 'loophole' in Ontario's warranty protection

By law, all new homes built in Ontario are provided with a warranty by the builder that is backstopped by Tarion, which provides compensation to homeowners when builders fail to do so.

But there is a catch.

A contract home — where the homebuyer owns the land and hires a builder — is entitled to warranties up to \$400,000, under the condition that the contractor has basically completed their work on the house, or in Tarion's words, if the contract has been "substantially performed."

If a house doesn't meet the threshold of a 97-per-cent completion rate, it is deemed ineligible for the warranties but may instead qualify for another type of coverage: "financial loss," which caps at \$40,000.

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Tarion initially calculated Maseh's home as being 97.71 per cent done. In its second ruling, it revised that figure to say only 85 per cent of the home was complete when the builder ceased work — so the builder isn't required to provide warranties for any defects.

Maseh says the 97-per-cent benchmark creates a “loophole” for builders to exploit.

He suspects that in some situations where a contractor realizes he had mucked up a building mid-contract, “he'd be a fool to finish the home. All he has to do is build 96 per cent, get paid then abandon the project.”

'Illusion of protection'

The 97-per-cent benchmark is neither stipulated in the Ontario New Home Warranties Plan Act, nor does it appear to be anywhere on Tarion's website.

A Tarion spokesperson said the agency calculates substantial performance by following a formula included in the province's construction act.

Maseh said he was not previously aware of the completion threshold for warranties and worried that it could “discourage” builders from completing the project so that they don't have to provide coverage.

“This organization is built on giving homeowners the illusion of protection and it leaves the door wide open for contractors to walk away from projects without penalty.”

Andrew Donnachie, a spokesperson for Tarion, said a contract home is treated differently than other homes because its purchaser has more control over the contractual relationship including monitoring the construction, setting the terms and protecting themselves in other ways.

While revisions to warranty decisions are uncommon, he said, “It’s important that we have a process in place to ultimately get to the correct result based on the evidence provided to us — including a reassessment if additional evidence should be considered.”

Inspection report documenting alleged defects used against homeowner

In March 2023, at least six months past the expected completion date for his new house, Maseh said he had to terminate the contract with Hanna Homes, a Burlington-based licensed builder, after feeling frustrated over what Maseh alleges were questionable billing practices and construction delays.

Immediately after firing the contractor, Maseh said he retained a third-party service to inspect the state of the construction.

The inspectors put together a list of deficiencies and incomplete work that “should have been completed during this phase of construction,” including missing guardrails on the staircases, water leaks in the basement, and hazardous connections in automatic lighting in the closet doors, according to a report they prepared.

The report found that the house was 85-per-cent done by factoring in both the amount of remaining work to construct the house to be ready for occupancy and the amount needed to rectify the defects left by the builder. To do both, it would cost Maseh more than \$150,000 on top of the \$1.3 million he’d already spent.

Maseh said the findings in the report were preliminary. Still, he submitted it to Tarion in order to demonstrate the “hopeless situation” the builder had put him in.

He is baffled at how Tarion, with this report in hand, first decided the house was more than 97 per cent complete, then cited the report as “evidence” for its change of heart.

Unearthed documents show builder pressured Tarion to change decision, homeowner claims

Unsatisfied with Tarion’s response, Maseh filed a freedom of information request and found that during the two months between Tarion’s first and second decision, Hanna Homes had written to Tarion and contested the agency’s initial findings.

“I certainly dispute such a decision and that’s absolutely unfair and unjust and totally disagree with its content and not in compliance with whatever Tarion warranty calls for ... That’s totally against any by laws and hence I will fight it,” Akram Hanna, owner of Hanna Homes wrote in one of his emails to a Tarion investigator in May.

The next month, a paralegal representing Hanna wrote a 78-page letter that urged Tarion to reconsider its first decision.

The letter said Maseh’s claim for warranties misrepresented the facts and was “rooted in ulterior motives.”

Maseh and Hanna have been mired in a bitter dispute for the past two years, with each side accusing the other of wrongdoing. The contractor has filed two lawsuits against the homeowner, alleging Maseh never paid for thousands of dollars in work and defamed his business. In court documents, Maseh accused Hanna of overbilling and poor workmanship. The cases are still ongoing.

The paralegal's letter also repeatedly challenged Tarion's initial assessment of the house being more than 97 per cent completed by Hanna Homes, calling it "simply incorrect and unsubstantiated."

It was shortly after the letter was received by Tarion when the agency issued its new decision and amended its calculation to 85 per cent.

In an email, Hanna said Tarion's initial decision was based on the homeowner's "wrong testimony," and he said the agency reached the proper conclusion after it received materials he had provided and carefully reviewed the inspector's report.

To Maseh, the records he unearthed show that Tarion's reversed decision was likely influenced by the legal pressure from Hanna.

Tarion said they revised the initial decision based on the third-party report, and was not under any pressure, legal or otherwise.

"They're not admitting the fact that they were under legal pressure to review this, or they're refusing to admit this," Maseh said.