Hotel News Now

Opinions

Loss of brand risk in branded residence projects

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Branded residence buyers, having paid a substantial premium for their association with the luxury brand, are at greater risk than they may think of the brand going away through no fault of their own.

By Scott Antel

Purchasers of branded residence properties (typically situated adjacent to a luxury hotel operating under a similar "brand") often cite the buyer assurances that a branded property brings.

Those include:

- quality design, fit-out and overall development delivered as advertised;
- high levels of security, common area maintenance and well enforced rules and regulations;
- convenient access to the adjoining hotel facilities and amenities, including concierge and other services; and
- not to mention the prestige and exclusivity of the lifestyle brand, which should also bring a resale premium on any subsequent sale.

What many buyers don't realize, however, is that perhaps the weakest of these assurances is that the brand will remain associated with residence development over the long term. A brand exit can be through no fault of buyer, and despite the buyer having paid a premium (typically from 15% to 50%) for the privilege of buying into a branded community.

In virtually all branded residence projects, buyers are required to execute a purchaser acknowledgement in favor of the brand and the developer acknowledging that:

- the brand is not an investor, developer or sponsor of the residence project and has no liability to the buyer with respect to the development, construction or sale of the residences;
- the brand is granting a limited and revocable right to associate the brand with the residence development, but without any grant of intellectual property rights;
- the right to associate the brand with the residences will automatically terminate should the brand cease to be associated with the adjoining hotel for whatever reason;
- the brand may terminate the association with the residences at any time and without consent of the residence owners; and
- the buyer has factored in the risk of loss of the brand when making a decision to purchase the residence at the brand sales premium and will have no claim for loss or damages against the brand should the brand be removed from the residences.

Reasons for loss of the brand

Loss of the brand may be wholly, partially, or completely not, attributable to the actions of the residence buyer.

The most common reason for removal of the brand is due to a failure of the developer's or residence owner's

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association to adequately fund the management and maintenance of the common areas/facilities, resulting in failure to maintain brand standards. For this, one cannot blame the brand operator.

In many jurisdictions, legislation governing jointly owned properties is poorly developed and often residence owners cannot be forced to join or remain in a common owner's association. This can expose the brand and compliant residence owners to actions of one or more "rogue" owners who, through failure to fund or other reasons, disrupt the management of the residences.

In other cases, the residence owners over time may feel that the costs of "branding" and maintaining brand standards is too expensive for their needs and elect to have the residence owner's association manage and maintain the property privately for less. In such case, an individual residence buyer willing to pay extra for the brand and brand standards can be at the mercy of the majority of less wiling owners.

In other cases, the loss of the brand may be completely outside the residence owners' control. Removal of the brand from the adjoining hotel due to a default of the hotel owner (or the brand operator) will almost certainly result in a cross default loss of the residence brand. While it's easy to understand a brand's hesitance to associate with residences located next to a competing brand hotel, the residence owner did not precipitate this.

More perturbing is when the brand and the residence developer mutually decide to terminate the relationship. This is not unusual, and the motivations at this stage of the project are understandable: the developer has made its brand premium on the residence sales and has far less economic interest in remaining in the project; likewise, the brand has earned its 3% to 6% brand license premium on the residence sales and has far less upside on managing the residences for a cost plus fee of 10% of the service charges. And it has to deal with not just the developer "devil" it knows, but potentially multiple "mini-devils" in the individual residence owners. A lot of work for little upside.

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But that is not what the prospective residence buyer contemplated when they read the glossy brochures and listened to the branding sales pitch. Despite the buyer's acknowledgement of, and waivers of claim for, potential loss of the brand, when paying that level of brand premium for a unit, certainly there is some reasonable buyer expectation of receiving the bargained-for benefits.

To date, there is little precedent for residence buyers, having paid the brand premium, bringing claims for subsequent loss of the brand (perhaps due to buyers failing to collectively agree to fund such dispute). But we can expect to see these disputes in future as the popularity of branded residence developments grows internationally.

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