

Property

NSW acts to reverse developer drain

Ben Hurley

Developers are quitting NSW because of the threat of litigation that can hit the profits of an apartment block for up to a decade after it is built.

But the state government is moving to correct the situation. Anthony Roberts, Minister for Fair Trade, said an explosion of lawsuits was causing "market failure" in the state, sending developers elsewhere and contributing to some of the lowest building levels in history.

But lawyers and strata groups said developers had nothing to fear if they built quality products.

Mr Roberts amended the Home Building Act last year to shorten the warranty developers had to offer apartment owners, making it six years for structural defects and two years for non-structural defects.

But he said loopholes in the complex act were still being exploited. He will shortly begin consultation for further changes which would force strata lawyers to "find another ambulance to chase".

"The banquet is over," Mr Roberts told *The Australian Financial Review*. "I make no apology in saying that I'd rather see money put into quality construction and rectify faults than putting the money into the pockets of lawyers."

David Ghannoum, regional managing director of construction and development for Brookfield Multiplex, said the litigation tail following apartment projects had made it unviable to build them in New South Wales.

"In the late '90s we were probably the third largest producer of high-rise apartments in Sydney and now we're producing none," Mr Ghannoum said. "That's got to leave a gap in the market."

He blamed the legal system, saying it was not a problem in other states and Brookfield didn't have the same problems with its NSW commercial buildings.

He said that, when the warranty for an apartment block neared its end, owners' corporations lodged a claim for issues ranging from tiling and brickwork to leaking toilets, silicon seals around taps, ovens that would otherwise have two-year warranties, and antenna outlets.

Once they had their foot in the door legal wrangling could drag on for years after the warranty expired and his technicians were not allowed to assess or fix the problem until it was resolved in court.

The result was sometimes \$100,000 of rectification work and millions of dollars in legal fees.

"The lawyers say [to the owners' corporation] you are representing



David Ghannoum blames the state's legal system.

Photo Lee Besford

these 200 owners, 'be it on your head if you don't bring this on'."

Billionaire apartment developer Harry Triguboff said inflated claims had "destroyed the whole industry here. That's why I went to build in Surfers Paradise and Brisbane".

He said lawyers didn't tell the owners that defect claims devalued their apartments.

Ongoing litigation was a factor behind the collapse of building

group Kell & Rigby last month.

The NSW government will meet resistance in any legal changes that are perceived to erode consumer protection.

"The underlying problem is the defects in the buildings, not the litigation," Mark Lever, chief executive of Strata Community Australia, said. "Developers have to stand behind their products."

He said the laws did not

adequately assign responsibility for defects, meaning builders were left with the tab when the developers or architects might be at fault.

Chris Moane, managing director of Integrated Consultancy Group, is a qualified structural engineer, a builder of 30 years and a court-appointed expert. He said lawyers did all they could to resolve problems in mediation, not court.

"Fundamentally it's about the developer building in compliance with the building code of Australia and the development consent," he said. "The problem is, they don't."

But Alex Ostermayer, partner at law firm Colin Biggers and Paisley, said there had been a rise in law firms inducing apartment owners to make "grossly inflated" claims in the past three or four years.

He said builders were pricing potential legal action into their quotes, upping the cost of housing. Others were refusing outright to take on apartment projects. And developers were using phoenix building companies that were liquidated at the end of each job in an attempt to minimise the fallout.

"That's a prudent course for them to adopt," he says.

State representatives of the Urban Development Institute of Australia said the issue was not on their radar in states other than NSW.

Hotelier in receivership

Gretchen Friemann
and Matthew Cranston

local newspaper the bank decided to move after he lost a dispute with

CBRE