

Topic: Building Defects, related budget items, non-compliance with Development Approval and advertised appliances, and return of CWF

Village: The Landings, North Turramurra

Operator: Sakkara Investment Holdings Pty Ltd *as trustee for Sakkara Landings Trust.*

The Advocate: Peter Hill, (RVRA honorary solicitor), managed the case in the CTTT, for the RC, on behalf of the residents of The Landings, who paid the legal fees.

The Dispute: Residents first moved into the village in 2003, and Building defects were immediately evident. In 2006 a resident arranged a building inspector from Fair Trading to inspect the village, and prepare a report on defective work. 6 years later many of these defects still had not been rectified.

Other matters considered in this case were:

- some defect rectification work had been charged to residents through recurrent charges, or residents had paid directly;
- newer units (in stage 4) bought off the plan did not comply with advertised finishes;
- residents voted to have CWF returned to residents, but this had not been done;
- residents claimed that the bowling green had been damaged by the operator and should be replaced;
- the operator had not complied with the DA to have a tank to collect stormwater, connected to the garden irrigation system;
- residents had been made to pay for routers for their internet service.

Case History: This case has a long history as several budget rejection cases had been “rolled over” into this building defect case, because CTTT considered the issues to be connected. The final application was made by Peter Hill on 1st March, 2012. There were several Directions Hearings, mediations, and finally a 3 day Hearing was held late in November 2012, where expert witnesses gave evidence for both sides. The CTTT decision was handed down on April 22nd 2013.

The Results:

In an earlier mediation, CTTT ordered Sakkara (by consent) to rectify the numerous building defects throughout the village.

In April 2013, CTTT made orders that the operator must:

- pay for the re-painting of all timber work across the village (the Tribunal Member decided, on the evidence, that the original painting work was defective);
- refund to residents the cost of the earlier re-painting of some pergolas (\$9,240);
- replace the bowling green to a competitive level standard, and maintain it in accord with manufacturers standards;
- connect the water tank to the irrigation system in accord with the original development consent for residents to have the benefit of recycled water for gardens;
- return the money paid by residents (estimated over \$18,000) who had to purchase internet routers (CTTT ruled that residents should not have been charged at all);
- return to residents monies contained in the Capital Works Fund (over \$122,000);
- purchase a stand by lift motor for the multi-storey apartment blocks, for the greater safety of residents;
- repay residents monies expended by Sakkara to rectify defects in several locations (in excess of \$5,705);

- return monies spent by individual residents to rectify defects that were Sakkara's responsibility (estimated at over \$20,000);
- return monies to Recurrent Charges of residents' money spent by Sakkara on past marketing events (\$6,500);
- return residents' monies Sakkara claimed were general maintenance, but were held to be replacement (estimated at a total of \$10,662);
- provide compensation to residents for Sakkara's staff and management time spent on rectifying defects during FY10;
- repay to residents overcharged management fees in FY09 (\$768), and
- pay some small compensation for residents in Stage 4 relating to the quality of their inclusions in their dwellings.

Other Matters

The CTTT did not order Sakkara to hold funds in escrow to complete the building rectification work. The Tribunal held that Sakkara has set aside the funds and the rectification work is continuing, also that residents have sufficient rights under legislation to pursue Sakkara in the future, if they do not complete the building work or replace items of capital.

What Has been Learnt?

In the case of building defects, have Fair Trading involved through a Building Inspection report, to ascertain the extent of the problem; keep a paper trail of communications with the operator, to show the efforts made to have items rectified.

Be vigilant in checking expenditure in budgets, and

Never give up, even though the going will be tough - and may seem to go on forever!

Remember - residents have rights, but you have to pursue them!