IN THE MATTER OF THE REAL ESTATE DEVELOPMENT MARKETING ACT
SBC 2004 Chapter 41

AND

1216920 B.C. LTD.

ORDERS UNDER SECTIONS 30(1) AND 32(1)
REAL ESTATE DEVELOPMENT MARKETING ACT

Upon reviewing the submissions of staff and exhibits, I am of the opinion that:

1. 1216920 B.C. Ltd. was registered as a company in the Province of British Columbia on July 19, 2019. The registered and records office is PO Box 819, 201-438 Birch Avenue, 100 Mile House, B.C. V0K 2E0, Canada. The directors of the company include Donna Marie Breen, Robert James Doornenbal, and Marty Fletcher.

2. Mountain View Resort (the “Development”) is a proposed recreational vehicle facility development of 36.91 acres located approximately 30 kms west of Revelstoke, British Columbia (“Resort lands”). The Developer is 1216920 B.C. Ltd. (the “Developer”). The Development’s legal description is:

   PID: 016-530-802
   Legal Subdivision 10 Section 20 Township 23 Range 4 West of Meridian Kamloops Division
   Yale District except Right of Way Plan 1879 and Plan R271

3. On July 23, 2019 the Office of the Superintendent of Real Estate (“OSRE”) received a Disclosure Statement from the Developer describing an offering of an estimated 120 cooperative interests (“Shares”) in the Mountain View Resort Owners’ Corporation (“Owners’ Association”) which was the owner of the Resort Lands. OSRE Staff reviewed the Disclosure Statement provided by the Developer and noted deficiencies.

4. The Real Estate Development Marketing Act, SBC 2004, Chapter 41 (“REDMA”) requires a developer who markets or intends to market a development unit to file with the Superintendent of Real Estate (“Superintendent”) a disclosure statement in the required form and with the required content before the developer commences marketing the development. The disclosure
statement must, without misrepresentation, plainly disclose all material facts. The developer must not enter into a purchase agreement with a purchaser unless a copy of the disclosure statement has been provided to the purchaser.

5. REDMA also requires a developer, prior to marketing a development unit, to make adequate arrangements to ensure that a purchaser of the development unit will have assurance of title or other interest for which the purchaser has contracted. Further, REDMA requires a developer who receives a deposit from a purchaser in relation to a development unit to promptly place the deposit with a brokerage, lawyer, notary public or prescribed person who in turn must hold the deposit as trustee in a trust account in a savings institution in British Columbia.

6. On August 13, 2019, a letter from OSRE staff was sent to the Developer setting out the deficiencies noted in the disclosure statement and requesting that the disclosure statement be corrected by August 19, 2019. The letter stated that if the disclosure statement was not corrected by that time all marketing of the development must cease and the Developer must provide written undertaking confirming same. A draft undertaking was provided with the letter.

7. On August 19, 2019, OSRE staff received a signed copy of that undertaking. The Developer has not filed a disclosure statement in relation to this development.

8. On February 5, 2020, OSRE received a public complaint regarding this development and contents of the complaint suggested that the Developer was continuing to market the development contrary to the provisions of REDMA.

LEGISLATION

9. Applicable sections of REDMA are reproduced below:

Definitions

1. In this Act:

"deposit" means money paid by a purchaser to a developer in relation to a development unit before the purchaser acquires title or any other interest in the development unit;

"developer" means a person who, directly or indirectly, owns, leases or has a right to acquire or dispose of development property, unless the person is, or is in a class of persons which is, excluded by regulation;

"development property" means any of the following:

(a) 5 or more subdivision lots in a subdivision, unless each lot is 64.7 ha or more in size;
(b) 5 or more bare land strata lots in a bare land strata plan;
(c) 5 or more strata lots in a stratified building;
(d) 2 or more cooperative interests in a cooperative association;
(e) 5 or more time share interests in a time share plan;
(f) 2 or more shared interests in land in the same parcel or parcels of land;
(g) 5 or more leasehold units in a residential leasehold complex;

“development unit” means any of the following in a development property:

(a) a subdivision lot;
(b) a bare land strata lot;
(c) a strata lot;
(d) a cooperative interest;
(e) a time share interest;
(f) A shared interest in land;
(g) A leasehold interest.

Marketing of development property

3 (1) A developer who markets or intends to market a development unit must

(a) meet the applicable requirements of Division 2 [Preliminary Requirements or Approvals],
(b) ensure that arrangements have been made in accordance with Division 3 [Title Assurance and Utility Payments]
(i) to assure the purchaser’s title or other interest for which the purchaser has contracted, and
(ii) to pay the cost of utilities and other services, and
(c) file and provide a disclosure statement in accordance with Division 4 [Disclosure Statements].

(2) A developer who receives a deposit must deal with the deposit in accordance with Division 5 [Deposits].

Filing disclosure statements

14 (1) A developer must not market a development unit unless the developer has

(a) prepared a disclosure statement respecting the development property in which the development unit is located, and
(b) filed with the superintendent
(i) the disclosure statement described under paragraph (a), and
(ii) any records required by the superintendent under subsection (3).

(2) A disclosure statement must
(a) be in the form and include the content required by the superintendent,
(b) without misrepresentation, plainly disclose all material facts,
(c) set out the substance of a purchaser’s rights to rescission as provided under section 21 [rights of rescission], and
(d) be signed as required by the regulations.

(3) A developer must provide to the superintendent any records the superintendent requires to support any statement contained in the disclosure statement filed under subsection (1).
(4) Without limiting section 16 [non-compliant disclosure statements], if a developer markets development units in phases, the developer, before marketing each successive phase, must file with the superintendent an amendment to a disclosure statement submitted in respect of the previous phase.

(4.1) Despite subsection (4), a developer who markets development units in a successive phase of a strata plan that is the subject of a Phased Strata Plan Declaration under the Strata Property Act need not file an amendment to a disclosure statement if both of the following apply:

(a) the developer files a phase disclosure statement under section 15.1 [phase disclosure statements] before marketing development units in the successive phase;

(b) the developer does not market any development units in any previous phase of the development property.

(5) On a person's payment of the prescribed fee, the superintendent must

(a) permit the person to inspect, at the superintendent's office and during regular business hours, a disclosure statement filed under this section, and

(b) provide a copy of a disclosure statement filed under this section, or a copy of part of it, to a person who requests it.

Non-compliant disclosure statements

16 (1) If a developer becomes aware that a disclosure statement does not comply with the Act or regulations, or contains a misrepresentation, the developer must immediately

(a) file with the superintendent, as applicable under subsection (2) or (3),

(i) a new disclosure statement, or

(ii) an amendment to the disclosure statement that clearly identifies and corrects the failure to comply or the misrepresentation, and

(b) within a reasonable time after filing a new disclosure statement or an amendment under paragraph provide a copy of the disclosure statement or amendment to each purchaser

(i) who is entitled, at any time, under section 15 [providing disclosure statements to purchasers] to receive the disclosure statement, and

(ii) who has not yet received title, or the other interest for which the purchaser has contracted, to the development unit in the development property that is the subject of the disclosure statement.

(2) A developer must file a new disclosure statement under subsection (1) (a) (i) if the failure to comply or misrepresentation referred to in that subsection

(a) is respecting a matter set out in paragraph (b) or (c) of the definition of "material fact" in section 1 [definitions],
(b) is respecting a matter set out in paragraph (d) of the definition of "material fact" in section 1, and the regulation prescribing the matter specifies that a new disclosure statement must be filed if subsection (1) of this section applies, or
(c) is of such a substantial nature that the superintendent gives notice to the developer that a new disclosure statement must be filed.

(3) A developer must file an amendment to the disclosure statement under subsection (1) (a) (ii) in any case to which subsection (2) does not apply.

(4) A developer who is required to file a new disclosure statement or an amendment under subsection (1) must not market a development unit in the development property that is the subject of the new disclosure statement or amendment
(a) until the developer has complied with subsection (1) (a), or
(b) unless permitted by the superintendent.

Handling deposits

18 (1) A developer who receives a deposit from a purchaser in relation to a development unit must promptly place the deposit with a brokerage, lawyer, notary public or prescribed person who must hold the deposit as trustee in a trust account in a savings institution in British Columbia.

(2) A trustee under subsection (1) holds the deposit for the developer and the purchaser and not as an agent for either of them and must not release the deposit from trust except as follows:
(a) if the money was paid into the trust account in error;
(b) to the purchaser with the written consent of the purchaser and the developer;
(c) in accordance with subsection (3) or (4);
(d) in accordance with section 19 [developer use of deposit] of this Act;
(e) in accordance with section 21 [rights of rescission] of this Act;
(f) in accordance with section 32 [unclaimed money held in trust] of the Real Estate Services Act;
(g) in accordance with section 33 [payment of trust funds into court] of the Real Estate Services Act;
(h) in accordance with a court order;
(i) in accordance with the regulations under this Act.

(3) A trustee under subsection (1) must release the deposit to the developer if the developer certifies in writing that
(a) the purchaser who paid the deposit has no right to rescission under section 21 [rights of rescission],
(b) if required, the subdivision plan, strata plan or other plan has been deposited in the appropriate land title office,
(c) the approvals required for the lawful occupation of the development unit have been obtained, and
(d) as applicable,

(i) if all or part of the purchaser’s interest in the development unit is registrable in a land title office, the interest has been registered in the appropriate land title office and an instrument evidencing the registration has been delivered to the purchaser, or

(ii) if all or part of the purchaser’s interest in the development unit is not registrable in a land title office, an instrument evidencing the interest of the purchaser has been delivered to the purchaser.

(4) A trustee under subsection (1) must release the deposit to the developer if the developer certifies in writing that

(a) the purchaser who paid the deposit has no right to rescission under section 21 [rights of rescission],

(b) the purchaser has failed to pay a subsequent deposit or the balance of the purchase price when required by the purchase agreement under which the deposit held by the trustee was paid,

(c) under the terms of the purchase agreement, if the purchaser fails to pay a subsequent deposit or the balance of the purchase price when required, the developer may elect to cancel the purchase agreement and, if the developer elects to cancel the purchase agreement, the amount of the deposit is forfeited to the developer, and

(d) the developer has elected to cancel the purchase agreement.

(5) For the purposes of subsection (2) (f) and (g), the provisions of the Real Estate Services Act referred to in that subsection apply to a trustee as if the trustee were a brokerage.

(6) Payment to a person in accordance subsection (2) (b), (c), (d) or (e) discharges the trustee from liability for the deposit in the amount paid out.

Orders

30 (1) After a hearing, if the superintendent determines that a developer is, or has been, non-compliant, the superintendent may do one or more of the following:

(a) order the developer to cease or refrain from marketing one or more development units;

(b) order the developer to carry out a specified activity related to marketing;

(b.1) order the developer to comply, or to carry out a specified activity for the purpose of complying, with a prohibition or requirement of

(i) Part 2.1 [Assignment Reporting Requirements], or

(ii) a regulation made for the purpose of Part 2.1;

(c) order the developer to pay amounts in accordance with section 31 [recovery of enforcement expenses];

(d) order the developer to pay an administrative penalty in an amount of

(i) not more than $500 000, in the case of a corporation, or

(ii) not more than $250 000, in the case of an individual.
(2) If the superintendent intends to make an order under subsection (1) (c) or (d), the superintendent may make the order against
(a) the developer,
(b) a person who was an officer, director, controlling shareholder or partner of the developer at the time of non-compliance, if that person authorized, permitted or acquiesced in the non-compliance, or
(c) both the developer and a person described in paragraph (b).

(3) The superintendent, by order made on the application of or with the consent of a person affected by the order, may
(a) vary or rescind an order made under subsection (1), and
(b) as a condition of varying or rescinding an order under paragraph (a), require an undertaking under section 36 (1) [undertakings].

Orders in urgent circumstances

32 (1) The superintendent may make an order referred to in section 30 (1) (a) or (b) [orders] against a developer under this section if the superintendent considers
(a) that the developer is, or has been, non-compliant,
(b) that the length of time that would be required to complete an investigation or hold a hearing, or both, would be detrimental to the public interest, and
(c) that it is in the public interest to make the order.

(2) Despite any other provision of this Division, an order may be made under this section
(a) whether or not a notice of hearing has been issued under section 27 [notice of hearing],
(b) without giving notice to the developer, and
(c) without providing the developer an opportunity to be heard.

(3) Promptly after an order under this section is made, the superintendent must deliver, in accordance with section 27 (3), to the developer who is the subject of the order
(a) a copy of the order and written reasons for it, and
(b) written notice that a hearing may be held respecting the order.

(4) A developer who is the subject of an order under subsection (1) may require, within 14 days after receiving a copy of the order, a hearing before the superintendent by delivering written notice to the superintendent.

(5) Within a reasonable time after receiving written notice referred to in subsection (4), the superintendent must
(a) provide notice of the hearing in accordance with section 27, and
(b) hold the required hearing in accordance with section 29 [hearings].

(6) Following the hearing referred to in subsection (5) (b), the superintendent
(a) must confirm, revoke or vary the order, and
(b) may make any other order referred to in section 30 (1).
Disclosure Statement

10. On July 23, 2019, OSRE received a Disclosure Statement from the Developer. The Disclosure Statement disclosed that the Developer did not own the development land but had acquired the right to develop the lands and sell shares in the development which was subject to a CPL registered under CA7557827. The land was owned by [name redacted]. The Disclosure Statement stated that the ownership of the land would transfer to the Developer upon resolution of the Certificate of pending Litigation ("CPL").

11. The Disclosure Statement failed to disclose that the Notice of Civil Claim pursuant to which the CPL was registered, alleged that the conveyance of the development lands to the registered owner, [name redacted] was a fraudulent conveyance.

12. On August 13, 2019, OSRE Staff wrote to the Developer identifying multiple deficiencies in the Disclosure Statement, some of which were technical but some were substantive deficiencies which raised concerns on the part of Staff as to whether the Developer had the legal authority to market the development units and or could provide assurance of title or of other interest for which the purchasers had contacted as required by section 11(1) of REDMA.

13. The Developer provided a written undertaking confirming that it had ceased marketing the property on August 19, 2019 and agreed that it would not resume marketing any or all development units until it had filed either a Disclosure Statement Amendment or a new Disclosure Statement. The Superintendent has not received either a Disclosure Statement Amendment or a new Disclosure Statement.

Public Complaint

14. On February 5, 2020, OSRE received a complaint from [name redacted] a member of the public, regarding the activities of the Developer.

15. On February 7, 2020, Staff interviewed [name redacted] initially contacted OSRE as she had become aware of the development through her boyfriend, [name redacted] who she understood had been in contact with a person who appeared to be selling shares in the development. She stated:
   a. She believed that [name redacted] had been in contact with someone who appeared to work for or be a representative of the Developer.
   b. She believed that [name redacted] had viewed the property and had been provided a purchase agreement.
   c. [name redacted] occupation is [position redacted] and she noted on the first purchase agreement the Developer was identified as 1944315 ALTA Ltd. When she did a corporate search for this company, she discovered that it had been struck from the Registry.
   d. She stated that when she pulled the land title for the property, a different company appeared as owner.
e. She stated that after several months was provided with a second purchase agreement which identified as the Seller.

f. She stated that she had viewed marketing material for the development including a site map and when she visited the site she observed construction underway.

g. She stated that she believed that the website where she had viewed information about the property was mountainviewresort.ca.

h. She stated that she was aware that a Disclosure Statement should have been provided.

16. On February 7, 2020, Staff interviewed

a. stated that he had previously viewed a similar development and he believed he was likely on a mailing list. He believes he became aware of the Mountainview Resorts development around September 2019.

b. When reviewing emails relating to this development, he noted that on August 2, 2019 he had been invited to an open house to take place in September 2019.

c. stated that he had contacted the Developer and spoke to an individual named on several occasions. He understood to be the sales representative of the Developer.

d. stated that he received marketing information that indicated some lots had already been sold.

e. stated that he entered into negotiations to purchase a lot with . He stated that they came to a price of $31,000 plus GST and on October 20, 2019 he received a purchase agreement. He also provided his credit card information to for a deposit which he understood would be in the sum of $500.00.

f. stated that prior to his signing the agreement he asked to review the document and it was at that point that it was discovered that the seller on the purchase agreement was an Alberta company that had been struck from the Alberta Registry and further that there was a CPL on title.

g. stated that after he asked about these issues, contact with ceased for a period of time. He stated that after this period of time, sent him a second purchase agreement which identified the seller as.

h. again asked for a disclosure statement and he understood from that because the transaction was a resale of shares through a disclosure statement was not necessary.

i. stated that he visited the site on two occasions in October of 2019 and there appeared to be 3-4 persons who had set up recreational vehicles on sites. In December 2019 he stated that had informed him that there were 8 other buyers.

j. was informed by that he would get a disclosure statement thirty days after signing the purchase agreement and that the company was in the process of seeking a resolution to the CPL on title.
INVESTIGATION

17. On the basis of the information provided by [redacted] and [redacted] OSRE Staff carried out open source searches of the Mountain View development and found multiple occurrences of active advertisements, an active facebook.com page as well as current and active web presence for this development.

18. A current review of the land titles records show the following encumbrances against title of the development lands:
   a. CA6943125: A Life Estate registered in the names of [redacted] and [redacted] as joint tenants;
   b. CA7557827: A Certificate of Pending Litigation registered against title in the name of [redacted] registered June 13, 2019;

19. A review of the Notice of Claim, Salmon Arm Registry No. 18003, filed on July 13, 2019, indicates that the allegations include an allegation that the conveyance of the resorts lands to [redacted] was fraudulent. However, the Disclosure Statement provided to OSRE on July 23, 2019 described the litigation as arising from a claim of unpaid debts to the previous owner of the property in the sum of $281,000 and that [redacted] had agreed to place this sum in trust to secure any potential liability.

20. There is evidence that the deposits received in relation to this development are not being placed in trust. The defective Disclosure Statement stated in paragraph 7.1 that deposits would be held in the Developer's solicitor's trust account until such time as a share was lawfully transferred to a purchaser. However, each of the contracts provided by the Developer to the complainant and the witness provide that the deposit will be directly paid to the seller, in one case [redacted] and in the other case, 1944315 Alberta Ltd. O/A Mountain View RV Resort, a defunct Alberta company.

AND WHEREAS:

I am satisfied based on the statements of the complainant and witness, open source research of staff, the inconsistencies between the information in the defective Disclosure Statement and court records and title search documents, and on the advice of staff that the Developer has been marketing the development without having filed a new or amended Disclosure Statement and contrary to the undertaking given to the Superintendent on August 19, 2019 contrary to section 14 of REDMA.

I am satisfied on the basis of the title search documents and the registered charges against the property that there is a serious concern and a likelihood that the developer has not made adequate arrangements to ensure that a purchaser of a development unit will have assurance of title or other interest for which the purchaser has contracted contrary to section 11(1) of REDMA.

I am satisfied on the basis of all of the evidence referred above that the developer will continue to market the development units without the required disclosure and deposit protection.
I AM THEREFORE OF THE OPINION THAT 1216920 B.C. Ltd. is not or has not been compliant with REDMA.

I AM FURTHER OF THE OPINION THAT the length of time that would be required to complete an investigation or hold a hearing, or both, would be detrimental to the public interest. The Developer is marketing or is likely to continue to market the development units in the development without providing adequate disclosure which the purchasers are entitled to receive, and the Developer is required to provide. In addition, the lawsuit filed by the Plaintiff in the civil claim, CA7557827, alleges that the conveyance of this property was fraudulent and therefore the outcome of this lawsuit may impact other potential purchasers with respect to whether they should purchase a development unit, and may impact the value or price or use of the development units.

I AM FURTHER OF THE OPINION THAT there is a real possibility that purchasers’ deposits are not being placed in trust accounts as required and the new purchasers may be at risk of losing any deposit money that they put down to purchase a development unit in the development.

I CONSIDER IT IN THE PUBLIC INTEREST to make the following Orders pursuant to sections 30(1) (a) and (b) and 32(1) of REDMA.

I THEREFORE MAKE THE FOLLOWING ORDERS AND GIVE THE FOLLOWING NOTICE:

1. Pursuant to section 30(1)(a) of REDMA, 1216920 B.C. Ltd. shall cease and refrain from marketing any or all of the development units in the development known as Mountain View Resort and more particularly described as: PID: 016-530-802
   Legal Subdivision 10 Section 20 Township 23 Range 4 West of Meridian Kamloops Division Yale District except Right of Way Plan 1879 and Plan R271;

2. Pursuant to section 30(1)(b) of REDMA, 1216920 B.C. Ltd. shall place all deposits received from a purchaser of a development unit with a brokerage, lawyer, notary public or prescribed person and instruct that brokerage, lawyer, notary public or prescribed person to hold the deposit as trustee in a trust account in a saving institution in British Columbia;

3. Pursuant to sections 16(2) and 30(1)(b) I give notice to 1216920 B.C. Ltd. and order 1216920 B.C. Ltd. to file a new Disclosure Statement that without misrepresentation plainly discloses all material facts as required under section 14(2) of REDMA.

TAKE NOTICE THAT 1216920 B.C. Ltd. may, pursuant to section 37(1)(f) of REDMA, appeal these Orders to the Financial Services Tribunal, or require a hearing before the Superintendent pursuant to section 32(4) of REDMA.

Dated at the City of Vancouver
Province of British Columbia
This 28th day of February, 2020

MICHEAL NOSEWORTHY
Superintendent of Real Estate
Province of British Columbia