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REAL ESTATE

Dozens of preconstruction homebuyers in limbo as Ontario homebuilder goes into receivership

The builder has a track record of “financial mismanagement,” according to the HCRA, which cites an “unexplained shortfall” of \$14 million in deposit funds

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An Ontario homebuilder has gone into receivership, leaving dozens of buyers unsure of when or if they'll get their deposit back or new home. 

By **Clarrie Feinstein** Business Reporter

Two years ago, Ryanne Stuart watched in horror as her million-dollar home purchase turned into a nightmare.

In February 2021, she and her husband signed an agreement of purchase and sale for a preconstruction detached house from an Ontario builder, Mariman Homes. It was a \$1.1-million, 2,600-square-foot single-family property in Pelham, in the centre of Niagara Region, with ample space for their three little kids to grow in.

The couple took out a home equity line of credit (HELOC) against their existing Hamilton house to pay the \$160,500 deposit on the new home.

But to Stuart's shock, in 2022 she found out construction on the home hadn't even begun and she began to doubt whether she could get her deposit back if she backed out of the deal. Their HELOC was ballooning and they realized they wouldn't be able to pay it off, so they sold their Ontario home and moved to Manitoba last year.

“We essentially took out a second mortgage for a house that didn't exist,” she said.

Stuart is one of dozens of preconstruction purchasers who fear they have lost their deposit to Mariman Homes, an Ontario builder and developer of new builds with a track record of “financial mismanagement,” according to the Home Construction

Regulatory Authority (HCRA). The assets of Mariman Homes were placed into receivership in January with one of their lenders, jeopardizing the home buyers' life savings.

Mariman Homes entered into agreements to build and sell 108 homes from prospective purchasers across multiple projects in the province when they only had authorization to do so for seven properties, HCRA documents reveal. In looking at their finances, the HCRA also notes an "unexplained shortfall" of \$14 million of deposit funds from homebuyers across several projects.

The ordeal has put buyers in an emotionally and financially stressful situation, as they don't know whether Mariman Homes will be able to secure more financing to finish building or whether their agreements of purchase and sale will be terminated in the court-ordered sale process. Finding a resolution will likely take months, an expert says, leaving the buyers are in a holding pattern for now.

A troubled history

On May 10, 2023, the HCRA refused to renew Mariman Homes' licence after receiving 13 consumer complaints that revealed a pattern of "financial mismanagement" resulting in "significant hardship for consumers," the HCRA wrote in its notice to refuse the company's licence renewal.

One major concern was that between December 2016 and April 2022 the builder entered into agreements to sell 108 new homes in Ontario, despite the fact that the HCRA had only permitted them to build or sell seven homes, the notice said. (Mariman Homes was licensed as a builder and vendor in 2013 — Mike Bettiol and Mary Bettiol are listed as directors of the corporation.)

The regulators' inspection found that Mariman Homes had run into financing issues for its new builds in Scotland, Ont., near Brantford. The issues arose after Mariman defaulted on mortgage obligations and their lenders pursued a power of sale. That process left several purchasers facing the prospect of losing their home if the new builders decided to terminate the original agreement of purchase and sale. Twelve lots were listed to be sold under power of sale, the notice said.

Ryan Macdonald put a \$144,000 deposit down on one of the Scotland lots in September 2020, before any lots went into a power of sale. The closing date on his home kept getting pushed back by Mariman Homes, which cited "unavoidable delays" and "product issues," Macdonald said.

In February 2022, Macdonald says he was told by the project manager that the completion of the home was imminent, but more money was needed to finish the basement.

"He requested an additional \$100,000 which I refused to pay up front, not until we saw progress on the property," Macdonald said. "After that we stopped hearing from him. I called him and he told me he wasn't managing projects for Mariman Homes anymore."

The experience has been "painful and emotional" for Macdonald and his family.

"They've taken millions of dollars away from many others," he said. "This has led to severe financial strain."

In its inspection for the licence renewal, the HCRA discovered that Mariman Homes — which collected more than \$15 million in deposit funds — stipulated in the agreements of purchase and sale that deposits would be held in a trust account, according to the notice. In response to the HCRA's inspection, the builder provided a redacted printout of its trust account statements that showed the account only held \$1.1 million, "leaving an unexplained shortfall" of \$14 million, the notice said.

Mariman Homes "has acknowledged that it did not hold the deposits in trust, contrary to the APS (agreement of purchase and sale) but claims to have used the funds to finance construction of other homes," the notice said.

In a written statement to the Star, the HCRA said it cannot provide “any specific details that may have been uncovered as part of our investigation” but said the organization works collaboratively with law enforcement “who are aware of this matter,” spokesperson Tess Lin said.

On Dec. 5, 2023, the HCRA suspended Mariman Homes’ licence and a month later the company went into receivership with their lender MarshallZehr.

“Unfortunately Mariman is now in a unique position that may look daunting to anyone not in the know of how we got here, and what we are going to do to fix it,” Michael Bettiol said in a written statement to the Star.

“As of today, not one single buyer has lost one dime. Yes, a lot of our (buyers) are frustrated with the many delays we have experienced over the last four years due to the global pandemic we all endured, but the majority of our (buyers) still want their homes and understand the delays the pandemic caused all builders, not just Mariman.”

Bettiol noted that he has a proposal in place with the HCRA to get the licence suspension lifted to start “building the homes as promised.”

“As far as our receivership, it has to deal with one of our projects, not all, and we are currently securing refinancing to pay out the current lender so we can get back on track with that project,” he added.

How can purchasers get their deposits back?

Mariman Homes failed to enrol most of the 108 new homes they planned to construct in Tarion’s warranty program, the HCRA said. However, even if the homes weren’t enrolled in the warranty program, purchasers may still be able to get their deposit protection, though there’s no guarantee.

By law, builders must provide a warranty on all new homes built in Ontario and Tarion has a mandate to ensure buyers of newly built homes receive the coverage they’re entitled to. But if a builder fails to deliver a home to the purchaser and can’t refund the purchaser, a deposit claim can be made by the purchaser to Tarion for the return of the deposit.

If buyers signed their purchase agreements on or after Jan. 1, 2018, homes with a sale price of \$600,000 or less would have up to \$60,000 of their deposit covered. Homes with a sale price over \$600,000 have protection coverage of 10 per cent of the price, up to a maximum of \$100,000.

“This particular builder and projects are currently under a receivership process. While the receivership process has begun, it remains unclear whether the purchase agreements will be cancelled or if another party may honour those agreements,” said Andrew Donnachie, manager, media and stakeholder relations, at Tarion. “Therefore, Tarion is unable to take action to refund a purchaser’s deposit (up to the coverage limit) at this time.”

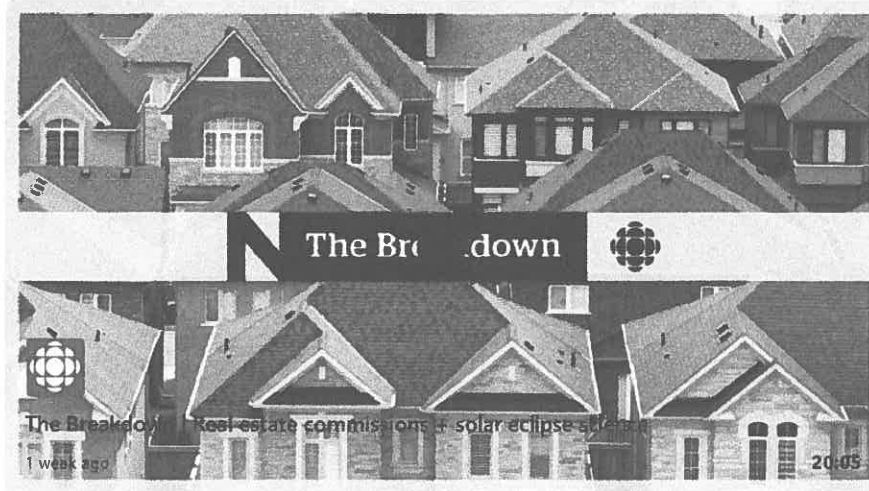
As part of the court-ordered sales process, the court could authorize a sale allowing another builder to take over Mariman Homes’ developments. The new builder could either assume the agreements of purchase and sale, in which case they’d promise to deliver homes to the original purchasers and honour the paid deposits, or they could terminate the agreements, potentially resulting in the purchasers submitting a deposit protection claim to Tarion, said Leor Margulies, real estate lawyer and partner at Robins Appleby, who is not involved in the case.

Mariman Homes could also secure more financing to pay out the secured lenders and finance the construction of the homes, which, with court authorization, would take the properties out of receivership and “allow Mariman to complete the homes and the original purchase agreements to be honoured,” he added.

It could take at least another three months before any decision on the sale of the properties is reached and approved by the court, he said, but that would be “really fast.”

For now, Macdonald is continuing to fight and get his deposit back, but he says he's lost hope, believing he'll "never" see his \$144,000 again.

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