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CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

PROMENADE AT PLAYA VISTA HOMEOWNERS ASSOCIATION, Plaintiff and Respondent, v. WESTERN PACIFIC HOUSING, INC., et al., Defendants and Appellants.	B225086 (Los Angeles County Super. Ct. No. BC424950)

APPEAL from an order of the Superior Court of Los Angeles County, Emilie H. Elias, Judge. Affirmed.

Wood, Smith, Henning & Berman, Stephen J. Henning, Sheila E. Fix, Tracy M. Lewis, and Robert G. Amundson for Defendants and Appellants.

Fenton Grant Mayfield Kaneda & Litt, Daniel H. Clifford, Joseph Kaneda and Bruce Mayfield for Plaintiff and Respondent.

This appeal presents the question of whether, in response to a construction defect action brought by a condominium homeowners association, the developer can compel binding arbitration of the litigation pursuant to an arbitration provision in the declaration of covenants, conditions, and restrictions (CC&R's). The answer is no.[1]

We reach this conclusion because the developer does not rely on a *contract* with the homeowners association to compel arbitration but instead on the arbitration provision in the CC&R's. Yet, under California law, the provisions in the CC&R's are equitable servitudes and can be enforced only by the homeowners association, the owner of a condominium, or both. Developers are not among those permitted to enforce CC&R's.

I

BACKGROUND

The facts and allegations in this appeal are taken from the pleadings, the exhibits submitted in connection with the motion to compel arbitration, and the standard procedure for creating a common interest development.

Defendants Western Pacific Housing, Inc., and Playa Capital Company, LLC (Developers), constructed, marketed, and sold a 90-unit condominium complex located on West Pacific Promenade in Playa Vista, California. Before the homeowners association (Association) came into existence or a single unit was sold, the Developers drafted and recorded the CC&R's. Only the Developers signed that document.

The CC&R's contained a mandatory arbitration provision, requiring that any disputes between the Developers, on the one hand, and the Association or a condominium owner, on the other hand, be submitted to binding arbitration. According to its terms, the provision could not be amended without the consent of the Developers.

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[1] This issue is pending before our Supreme Court in *Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC* (2010) 187 Cal.App.4th 24, review granted November 10, 2010, S186149 (lead case).

The CC&R's made the Federal Arbitration Act (FAA) (9 U.S.C. §§ 1–16) applicable in interpreting and enforcing the arbitration provision.

Sales of the units began in 2004. In addition to the CC&R's, each "Purchase Agreement and Escrow Instructions" contained a mandatory arbitration provision, requiring that postclosing disputes between the Developers and the buyer be submitted to binding arbitration. The purchase agreements, unlike the CC&R's, were signed by both the Developers and the buyer.

Initially, the members of the Association's board of directors were appointed by the Developers. Ultimately, the Developers sold all the units and no longer had any ownership interest in the complex. The owners replaced the initial board members with individuals of their own choosing.

On October 29, 2009, the Association filed this action against the Developers, alleging construction defects in the roofs, stucco, windows, and doors, and the structural, electrical, plumbing, and mechanical components and systems. The Developers responded with a motion to compel arbitration, relying on the arbitration provision in the CC&R's and the individual purchase agreements.

The Association filed opposition, contending the CC&R's were not subject to arbitration because they were equitable servitudes, not a contract, and, alternatively, if they were a contract, enforcement was barred because the contract was unconscionable. The Association also pointed out that 30 of the original buyers had sold their units, and the arbitration provision in their purchase agreements with the Developers did not apply to the subsequent purchasers.

The motion was heard on April 12, 2010. By order of the same date, the trial court denied the motion to compel. The Developers appealed.

II

DISCUSSION

We review the trial court's decision independently because it involves interpreting the CC&R's and applicable statutes. (See *P&D Consultants, Inc. v. City of*

Carlsbad (2010) 190 Cal.App.4th 1332, 1340; *Redding Medical Center v. Bonta´* (2004) 115 Cal.App.4th 1031, 1037.)

On appeal, the parties focus primarily on whether the CC&R's are unconscionable. In their opening brief, the Developers state they no longer rely on the arbitration provision in the *purchase agreements with the original buyers* to compel arbitration. Rather, the Developers base their alleged right to arbitrate solely on the arbitration provision in the *CC&R's*, arguing that the original purchase agreements constitute evidence that procedural unconscionability is lacking — an issue not relevant to our analysis because we view the CC&R's as equitable servitudes, not as a contract to arbitrate.

For its part, the Association again argues that the Developers cannot enforce the CC&R's because that document consists of equitable servitudes; it is not a contract and is therefore not enforceable by the Developers, who have no ownership interest in the condominium complex. We agree with the Association and affirm.

Under the FAA, "[a] written provision in any maritime transaction or a *contract* evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such *contract* or transaction . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." (9 U.S.C. § 2, italics added.) But this case involves equitable servitudes, not a contract, making the FAA inapplicable.

As our Supreme Court has explained at length: "To divide a plot of land into interests severable by blocks or planes, the attorney for the land developer must prepare a declaration that must be recorded prior to the sale of any unit in the county where the land is located. . . . The declaration, which is the operative document for the creation of any common interest development, is a collection of covenants, conditions and servitudes that govern the project. . . . Typically, the declaration describes the real property and any structures on the property, delineates the common areas within the project as well as the individually held lots or units, and sets forth restrictions pertaining to the use of the property. . . .

"Use restrictions are an inherent part of any common interest development and are crucial to the stable, planned environment of any shared ownership arrangement. . . . The viability of shared ownership of improved real property rests on the existence of extensive reciprocal servitudes, together with the ability of each co-owner to prevent the property's partition. . . .

"The restrictions on the use of property in any common interest development may limit activities conducted in the common areas as well as in the confines of the home itself. . . . Commonly, use restrictions preclude alteration of building exteriors, limit the number of persons that can occupy each unit, and place limitations on — or prohibit altogether — the keeping of pets. . . .

"Restrictions on property use are not the only characteristic of common interest ownership. Ordinarily, such ownership also entails mandatory membership in an owners association, which, through an elected board of directors, is empowered to enforce any use restrictions contained in the project's declaration or master deed and to enact new rules governing the use and occupancy of property within the project." (*Nahrstedt v. Lakeside Village Condominium Assn*. (1994) 8 Cal.4th 361, 372–373, citations & fn. omitted.)

The court continued: "One significant factor in the continued popularity of the common interest form of property ownership is the ability of *homeowners* to enforce restrictive CC&R's against other owners (including future purchasers) of project units. . . . Generally, however, such enforcement is possible only if the restriction that is sought to be enforced meets the requirements of equitable servitudes or of covenants running with the land. . . .

"Restrictive covenants will run with the land, and thus bind successive owners, if the deed or other instrument containing the restrictive covenant particularly describes the lands to be benefited and burdened by the restriction and expressly provides that successors in interest of the covenantor's land will be bound for the benefit of the covenantee's land. Moreover, restrictions must relate to use, repair, maintenance, or

improvement of the property, or to payment of taxes or assessments, and the instrument containing the restrictions must be recorded. . . .

"Restrictions that do not meet the requirements of covenants running with the land may be enforceable as equitable servitudes provided the person bound by the restrictions had notice of their existence." (*Nahrstedt v. Lakeside Village Condominium Assn.*, *supra*, 8 Cal.4th at p. 375, italics added.)

"Under the law of equitable servitudes, courts may enforce a promise about the use of land even though the person who made the promise has transferred the land to another. . . . The underlying idea is that a landowner's promise to refrain from particular conduct pertaining to land creates in the beneficiary of that promise 'an equitable interest in the land of the promisor.' . . . The doctrine is useful chiefly to enforce uniform building restrictions under a general plan for an entire tract of land or for a subdivision. . . . 'It is undoubted that when the owner of a subdivided tract conveys the various parcels in the tract by deeds containing appropriate language imposing restrictions on each parcel as part of a general plan of restrictions common to all the parcels and designed for their mutual benefit, mutual equitable servitudes are thereby created in favor of each parcel as against all the others.'

"In choosing equitable servitude law as the standard for enforcing CC&R's in common interest developments, the Legislature has manifested a preference in favor of their enforcement. This preference is underscored by the use of the word 'shall' in the first phrase of [Civil Code] section 1354: 'The covenants and restrictions shall be enforceable equitable servitudes . . . .'" (*Nahrstedt v. Lakeside Village Condominium Assn.*, *supra*, 8 Cal.4th at pp. 379–380, citations omitted.)

"Having a single set of recorded restrictions that apply to the entire subdivision would also no doubt fulfill the intent, expectations, and wishes of the parties and community as a whole. 'One of the prime policy components of the law of equitable servitudes and real covenants is that of meeting the reasonable expectations of the parties and of the community.' . . .

"By requiring recordation [of the CC&R's] before execution of the contract of sale, . . . [a]ll buyers could easily know exactly what they were purchasing. . . . 'Where a tract index is in effect, a plan of the proposed development should be recorded against the entire tract, which would give notice to all purchasers by placing the restriction in the direct chain of title to each lot in the tract.' . . . 'The burden should be upon the developer to insert the covenant into the record in a way that it can be easily found. Recording a declaration of covenants covering the entire area or filing a map which referred to the covenants would be sufficient.' . . . When a developer does follow this simple procedure, it should suffice; future buyers should be deemed to agree to the restrictions." (*Citizens for Covenant Compliance v. Anderson* (1995) 12 Cal.4th 345, 364–365, citation omitted.)

That brings us to the question of *who* may enforce the CC&R's. The Legislature answered that question in Civil Code section 1354, subdivision (a), which states: "The covenants and restrictions in the declaration shall be enforceable equitable servitudes, unless unreasonable, and shall inure to the benefit of and bind *all owners of separate interests in the development*. Unless the declaration states otherwise, these servitudes *may be enforced by any owner of a separate interest or by the association, or by both*." (Italics added; all undesignated section references are to the Civil Code.) "The provision's express reference to 'equitable servitudes' evidences the Legislature's intent that recorded use restrictions falling within section 1354 are to be treated as equitable servitudes. . . . Thus, although under general rules governing equitable servitudes a subsequent purchaser of land subject to restrictions must have actual notice of the restrictions, actual notice is not required to enforce recorded use restrictions covered by section 1354 against a subsequent purchaser. Rather, the inclusion of covenants and restrictions in the declaration recorded with the county recorder provides sufficient notice to permit the enforcement of such recorded covenants and restrictions as equitable servitudes." (*Nahrstedt v. Lakeside Village Condominium Assn.*, *supra*, 8 Cal.4th at p. 379, citation & fn. omitted.)

Under the "plain meaning" rule used to interpret statutes (*Simke, Chodos, Silberfeld & Anteau, Inc. v. Athans* (2011) 195 Cal.App.4th 1275, 1284), we construe the "benefit and bind" language of section 1354 to link ownership in the condominium complex with enforcement of the CC&R's: The owners, the homeowners association, or both, may enforce the CC&R's unless the CC&R's provide otherwise. But under any rationale interpretation of section 1354, the Developers cannot enforce the CC&R's once they have completed the project and sold all the units; they no longer have any ownership interest in the property. "Section 1354 . . . confers standing *on owners of separate interests* in a development and *on the association* to enforce the equitable servitudes . . . ." (*Nahrstedt v. Lakeside Village Condominium Assn.*, *supra*, 8 Cal.4th at p. 379, fn. 9, italics added.)

In *Martin v. Bridgeport Community Assn., Inc.* (2009) 173 Cal.App.4th 1024, a husband and wife, the Petersons, bought property in a planned development community and agreed that their daughter and her husband, the Martins, could live there. The Petersons executed a power of attorney stating that the Martins would be responsible for all costs associated with the property, including mortgage payments, and would deal directly with the homeowners association on all issues. The homeowners association accepted the power of attorney. During the construction of the house, the Petersons and the Martins noticed that the size of the lot was smaller than represented in the purchase transaction. As a result of negotiations with the Martins, the homeowners association agreed to move the northern property line. The agreement was confirmed in two letters addressed to the Martins, who undertook the expense of fencing, importing dirt, and landscaping the additional land. When the homeowners association failed to cooperate timely in obtaining city approval of the lot adjustment, the Martins filed suit against the association, alleging causes of action for breach of contract and breach of the CC&R's. After the trial court sustained demurrers to the complaint on the ground that the Martins lacked standing, judgment was entered in favor of the homeowners association. The Martins appealed.

Relying on section 1354, the Court of Appeal affirmed, stating: "In the instant case, as owners of lot 33, the Petersons qualify as 'an owner of a separate interest' entitled to enforce the CC&R's . . . and other governing documents of [the Bridgeport community]. . . . The Martins do not qualify. What is bound by an equitable servitude enforceable under CC&R's is a parcel, a lot, in a subdivided tract, not an individual who has no ownership interest in the lot. (See § 1354, subd. (a).) '"[W]hen the owner of a subdivided tract conveys the various parcels in the tract by deeds containing appropriate language imposing restrictions on each parcel as part of a general plan of restrictions common to all the parcels and designed for their mutual benefit, mutual equitable servitudes are thereby created in favor of each parcel as against all the others." . . .' . . . Accordingly, *the right of enforcement is inextricable from ownership of real property* — a parcel, a lot — in a planned development such as Bridgeport and, thus, cannot be assigned absent a transfer of ownership of the parcel to which it applies." (*Martin v. Bridgeport Community Assn., Inc., supra*, 173 Cal.App.4th at p. 1036, italics added, citations omitted.) To the same effect is *Farber v. Bay View Terrace Homeowners Assn*. (2006) 141 Cal.App.4th 1007, in which the Court of Appeal held that the seller of a condominium lacked standing under the CC&R's to require the homeowners association to repair a leaking roof because the sale had closed, and the seller no longer owned the unit (*id.* at pages 1011–1013).

And so it is here. The Developers do not own any property in the Playa Vista complex and therefore have no standing to enforce the CC&R's, including the arbitration provision. By analogy, where grant deeds contain identical restrictions applicable to several lots in a tract, "[i]t is not open to question that building restrictions of the kind contained in the deed[s] . . . are valid and enforceable at the suit of the grantor *so long as he continues to own any part of the tract* for the benefit of which the restrictions were exacted." (*Firth v. Marovich* (1911) 160 Cal. 257, 260, italics added.) "[A]fter a grantor has parted with the property which would derive benefit from a continuance of the restrictions, such grantor has no standing in court to enforce the restrictions." (*Kent v. Koch* (1958) 166 Cal.App.2d 579, 586.)

Our conclusion that the Developers cannot enforce the arbitration provision in the CC&R's is in harmony with section 1375, which requires a homeowners association to initiate and pursue mediation with a developer, builder, or general contractor before filing suit. "In 1995, § 1375 was added to the Civil Code to impose a complex set of prerequisites to an action by a common interest development association against a builder of a common interest development. Since then, § 1375(a) has been expanded to encompass actions against developers and general contractors . . . . The association must give written notice with a preliminary list of defects, a summary of any survey of homeowners concerning defects and a summary of any testing or the actual test results. Section 1375(b) specifies the nature and content of the notice and the manner of its service in detail. This notice commences a period of time up to 180 days, subject to an extension for a second 180-day period on agreement of the association, the builder, developer or general contractor, and any parties not deemed peripheral, as defined in the section, during which the association and the defendants must attempt to settle the dispute or attempt to agree to alternative dispute resolution. The notice tolls any applicable statute of limitations and any contractual limitations periods against all parties who may be responsible for the damages claimed, whether or not named in the notice, including claims for indemnity.

"Within 25 days of the notice, § 1375 entitles the defendants to meet and confer with the association's board of directors and to inspect the property and conduct testing appropriate to evaluate the claim. Following receipt of the notice, the builder, developer or general contractor and the association have 60 days to comply with a number of requirements set out in the statute, including production of relevant documents (or a privilege log), notice to insurers, including insurers of subcontractors and design professionals, arrangement of a meet and confer conference to attempt to select a dispute resolution facilitator to preside over the mandatory dispute resolution process. The defendants and the association must meet and confer about the settlement offer within 20 days, although this and other time periods may be modified by mutual consent.

"Subcontractors and design professionals can petition the facilitator to be excused from the dispute resolution process at any time if they could not possibly be responsible for the defect at issue, and the court may authorize the taking of depositions, resolve disputes about inspection, testing and discovery, and determine whether a proposed settlement is in good faith." (1 Schwing, Cal. Affirmative Defenses (2011 ed.) § 12:39, pp. 773–775, fns. omitted.)

Simply put, the Legislature's enactment of section 1375 — a complex alternative dispute process — supports the view that the CC&R's cannot mandate a second alternative dispute process for claims against the developer once it has no ownership interest in the land.

The Developers' reliance on *B.C.E. Development, Inc. v. Smith* (1989) 215 Cal.App.3d 1142 (*B.C.E. Development*) is misplaced. In that case, the developer had authority to enforce the CC&R's through an architectural committee that had the power to approve or reject residential building plans *after* the developer had sold all the units. The CC&R's created the committee and gave the developer the right to appoint its members and carry out its administrative duties. (*Id.* at pp. 1144–1145 & fn. 1.) Two owners, the Smiths, obtained committee approval to construct a house, but the construction did not comply with the approved plans. The successor-in-interest to the original developer obtained an injunction halting the work. The Smiths appealed, arguing the successor-in-interest had no standing to sue because it did not own any property in the complex. The Court of Appeal affirmed the injunction on the ground that the developer and its successors retained authority to make "land use decisions" through the architectural committee and therefore could enforce the CC&R's even though they had no ownership interest in the development. (*Id.* at pp. 1148–1149.)

The court also emphasized: "We note that this is not a case in which a developer is shown to have retained unreasonable or imperious control over artistic decisions of homeowners long after having completed the subdivision. Equity might well decline to enforce such asserted control, *especially if it were shown to be contrary to the then desires of the homeowners*. That is not this case. Under the provisions for amendment

of the declaration the homeowners at any time, by the vote of two-thirds of their members, . . . could have ousted the developer's designated enforcement agency and substituted their own committee. In accordance with Civil Code section 1356 (part of the Davis–Stirling Common Interest Development Act) the homeowners since 1985 could have petitioned for the right to amend their declaration by a vote of only a plurality of their members. The homeowners in this subdivision having permitted the continuance of the architectural committee named by [the developer], and having tolerated [the developer's] administration, for apparently many years following completion of the subdivision, it may be inferred that they have ratified the continuance of the status quo." (*B.C.E. Development*, *supra*, 215 Cal.App.3d at pp. 1149–1150, italics added.)

Here, after the Developers sold the last unit, they retained no authority or control of any kind with respect to the Playa Vista condominiums. Further, unlike the CC&R's in *B.C.E. Development*, the CC&R's in this case preclude the owners from amending or deleting the arbitration provision unless the Developers consent to the amendment, which they refuse to do. The Association represents the views of the owners, and it has opposed the Developers' alleged right to enforce the CC&R's, indicating that the Association and the owners share the same desire. Finally, *B.C.E. Development* did not address or even mention section 1354.

A leading treatise, Miller and Starr, has observed: "Unless a clear intention to allow enforcement by others is expressed in the covenant,[2] the party seeking to enforce a covenant running with the land must have a legal interest in the benefited property.[3] Third parties lack standing to enforce the covenant against the obligor or burdened

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[2] In a footnote at this point, the treatise cited: "*B.C.E. Development, Inc. v. Smith*, 215 Cal.App.3d 1142, 1146, 264 Cal.Rptr. 55 (4th Dist. 1989) (equitable servitude)."

[3] In a footnote at this point, the treatise cited: "*Farber v. Bay View Terrace Homeowners Ass'n*, 141 Cal.App.4th 1007, 1011, 46 Cal.Rptr.3d 425 (4th Dist. 2006) . . . ."

property[4], and the seller or transferor of the benefited property cannot enforce the covenant after conveying away title to another."[5] (8 Miller & Starr, Cal. Real Estate (3d ed. 2011) § 24:25, p. 24-96, fns. omitted.) The treatise also states: "As long as the subdivider retains an interest in the benefited property, the subdivider has standing to enforce the restrictions under the preceding authorities. The situation is different after the subdivider no longer owns any property in the subdivision. If the restrictions evidence a clear intent to permit enforcement by the declarant, *there is authority* for the original declarant and its successors who hold no remaining interest to sue to enforce the restrictions as equitable servitudes even after they have transferred all interests in the subdivision." (*Id.* at pp. 24-96 to 24-97, fns. omitted, italics added, citing *B.C.E. Development*, *supra*, 215 Cal.App.3d at pp. 1146–1148.)

Nevertheless, although the treatise acknowledges *B.C.E. Development*, the authors go on to explain: "Under Civ. Code, § 1354, subd. (a), only *an owner* of an interest in the land in the development has standing to enforce the obligations of the association under the CC&Rs." (8 Miller & Starr, Cal. Real Estate, *supra*, § 24:25, p. 24-96, fn. 13, italics added.) "In a common interest development, the rights of the *subdivider* to enforce the restrictions are prescribed in and limited by the Davis Stirling Act. See Civ. Code, [§] 1354, subd. (a) (no reference to subdivider's standing to enforce [CC&R's] in describing right of owner or association to enforce [them])." (8 Miller & Starr, Cal. Real Estate, *supra*, § 24:25, p. 24-97, fn. 16.)

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4 In a footnote at this point, the treatise cited: ". . . *Farber v. Bay View Terrace Homeowners Ass'n*, 141 Cal.App.4th 1007, 46 Cal.Rptr.3d 425 (4th Dist. 2006) (seller of a condominium unit had no standing to sue the homeowners' association to enforce the CC&Rs and to compel the homeowners' association to perform its obligation to repair the roof of the unit she had sold.) . . . ."

5 In a footnote at this point, the treatise cited: "*Farber v. Bay View Terrace Homeowners Ass'n*, 141 Cal. App. 4th 1007, 1011 . . . ."

Thus, *B.C.E. Development* is distinguishable. Here, the Developers have no input or continuing authority of any type over the complex, and the owners at the Playa Vista condominiums cannot amend or delete the arbitration provision in the CC&R's even though they so desire. In addition, section 1354, which was enacted in 1985 (Stats. 1985, ch. 874, § 14, p. 2777), indicates that *B.C.E. Development*, decided in 1989, is wrong; the homeowners association or a property owner, not the developer, should have filed suit to stop the flawed construction.

Another secondary authority — on which *B.C.E. Development* somehow drew support (see *B.C.E. Development*, *supra*, 215 Cal.App.3d at p. 1147) — states: "The benefit of a promise respecting the use of land of the beneficiary of the promise can run with the land *only to one who succeeds to some interest* of the beneficiary in the land respecting the use of which the promise was made; and generally, a restrictive covenant can be *enforced only by the owner* of some part of the dominant land for the benefit of which the covenant was made.

"One who seeks to enforce a restrictive covenant must show that he is the *owner* of, or *has an interest in*, the premises in favor of which the benefit or privilege has been created; otherwise, he has no interest in the covenant and is a mere intruder. Equity will protect equitable titles as well as legal titles.

"However, the law in regard to covenants is not so strictly defined as to require in all cases that a stranger to the covenant, who is seeking enforcement, must show some right or beneficial interest in the land affected by the covenant, or in the adjoining lands. An incorporated *association of homeowners* within an area subjected to planned and uniform restrictive covenants, which association, has no legal title to any property in the area, but whose primary purpose is to enforce the covenants for the good and on behalf of all the property owners, acting as the agent or representative of such property owners, and whose formation for the purpose of requiring conformance was set forth in the declaration establishing the restrictive covenants, has been held *entitled to sue to enjoin violations of the covenants*.

"As a general rule, subject to some exceptions, a grantor or covenantee may not enforce a restrictive covenant where he *no longer has an interest in the land* to be affected by violations, and a similar rule obtains in regard to enforcement by persons other than the grantor.

"*Homeowners' associations* appear to be a relatively modern device, a natural outgrowth of the development of housing projects on a large scale, particularly in urban communities where the general good of all within the community requires adherence to some common standards. . . . [T]he enforcement of such standards had to be centralized and homeowners' associations came into being. *The primary purpose of . . . an association of homeowners* organized as a nonprofit corporation whose membership consists of the owners of real property within an area subject to planned and uniform restrictive covenants, *is to enforce the covenants* on behalf and for the good of all *property owners* who constituted its membership." (Annot., Who May Enforce Restrictive Covenant or Agreement as to Use of Real Property (1973) 51 A.L.R.3d 556, 586–587, § 5, fns. omitted, italics added.) This authority provides no solace to the Developers: It is one thing to say that a homeowners association, which consists of property owners, may enforce the CC&R's. (See §§ 1368.3, subd. (a); 1351, subd. (j).) It is quite another to jump to the conclusion that a developer, which has no ownership interest in the property, direct or indirect, may also enforce them.

Last, our conclusion that the Developers lack standing is in harmony with the regulations promulgated by the Department of Real Estate governing alternative dispute resolution procedures in the CC&R's as to claims between developers and owners (Cal. Code Regs., tit. 10, § 2791.8) and with the department's task of reviewing CC&R's before allowing the sale or lease of land (Bus. & Prof. Code, §§ 11010, 11018, 11018.2). Nothing in the regulations or pertinent statutes authorizes a developer to insert a provision in the CC&R's requiring *binding* arbitration of construction defect claims brought against it where the provision is, by its terms, *not subject to amendment by the eventual owners*.

Accordingly, the trial court properly denied the motion to compel arbitration.

III

DISPOSITION

The order is affirmed.

CERTIFIED FOR PUBLICATION.

MALLANO, P. J.

We concur:

CHANEY, J.

JOHNSON, J.