

## THIRD DIVISION

[ CA-G.R. SP No. 135207, January 30, 2015 ]

**ECE REALTY & DEVELOPMENT INC., PETITIONER, VS. SPS. FIL  
AND IMELDA TALAIN, RESPONDENTS.**

### DECISION

**GONZALES-SISON, M., J.:**

Before this Court is a Petition for Review<sup>[1]</sup> which seeks to reverse and set aside the decision and resolution of the Office of the President in O.P. Case No. 09-J-556 dated 23 October 2013 and 03 April 2014 respectively.

Briefly, the facts of the case are as follows:

Petitioner ECE Realty & Development, Inc., (petitioner) is a real estate developer company and is the owner/developer of Wynham Hills Project (project) located at Mayasang, Lemery, Batangas. Among petitioner's clients for said project is herein respondents Spouses Fil and Imelda Talain (respondents) who made a reservation for a property therein specifically described as Duplex Unit No. 65 View Deck (subject unit).

On 10 December 2001, the petitioner and the respondents executed a Contract to Sell over the subject unit, the pertinent terms of which are reproduced as follows:

#### "PRICE AND TERMS OF PAYMENT

The price, exclusive of interest, shall be in PHILIPPINE PESO THREE MILLION ONE HUNDRED FIFTY THREE THOUSAND EIGHT HUNDRED TWENTY & 32/100 (P3,153,820.32) which represents the total purchase price of the subject unit, shall be payable as follows:

a) SEVEN HUNDRED EIGHTY NINE THOUSAND TWO HUNDRED FIFTY THREE & 92/100 PESOS ONLY (P789,253.92) as down payment;

b) TWENTY NINE THOUSAND NINE HUNDRED FIFTY SIX & 50/100 PESOS ONLY (P29,956.50) monthly for Twenty Four (24) months commencing on or before Jan. 10, 2002 and every succeeding months thereafter.

c) ONE MILLION SIX HUNDRED FORTY FIVE THOUSAND SIX HUNDRED TEN & 40/100 (P1,645,610.40) representing the balance after deducting a and b above with interest at Twenty One (21 %) percent per annum payable in Sixty (60) months in monthly installments of principal and interest in the amount of FORTY FOUR THOUSAND FIVE HUNDRED NINETEEN & 29/100 PESOS ONLY (P 44,519.29).

XXXX.

ESTIMATED DELIVERY DATE: Eighteen mons(sic) upon full D/P"<sup>[2]</sup>

After the respondents have paid in full the total down payment, they waited for eighteen months or until July 2003 for the delivery of the subject unit but, to no avail. Nonetheless, the respondents continued delivering post dated checks to petitioner in consonance with the stipulated monthly payments. On 9 January 2005, the respondents gave notice to petitioner that they are withholding further payments until the subject unit is delivered. Without getting any result, the respondents on 25 May 2005 served on petitioner a notice of rescission and demand for the return of payments in the amount of P1,824,550.00 but, said demand fell on deaf ears. Finally, on 4 July 2007, the respondents instituted a complaint for rescission of contract and refund with damage against the petitioner.

In its defense, petitioner claimed that the respondents have no right to rescind the Contract to Sell considering that the latter opted to suspend payment of the monthly installments in December of 2004, hence, the petitioner also has the commensurate right to suspend the delivery of the subject unit. In effect, petitioner asserted that the delivery date of the subject unit has not yet arrived in view of the suspension of payments made by the respondents.

The Housing and Land Use Arbiter (Arbiter), to whom the case was assigned, however, disagreed with the contention of petitioner. The Arbiter ruled that the reckoning period for the delivery of the subject unit should be eighteen months from the time the down payment, amounting to P789,253.92, has been fully paid and not eighteen months after the completion of the twenty-four monthly installments. When the respondents filed their complaint it was already after the eighteen months delivery date, as construed above, hence, petitioner, was already in delay. Moreover, when the respondents suspended the monthly payments they were acting within their rights due to the failure of the petitioner to hand over the unit in the agreed period. The payments already made by the respondents could also not be forfeited in favor of the petitioner due to the failure of the petitioner to develop the project as confirmed by an ocular inspection conducted by the HLURB-Regional Office.<sup>[3]</sup> Ultimately, in view of his findings, the Arbiter ordered the rescission of the Contract to Sell, ordered the refund of payments and awarded damages to the respondents. In addition, petitioner was also fined.

The dispositive portion of decision of the Arbiter dated 15 October 2008 is as follows:

"WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. Declaring the rescission of the contract as valid;
2. Ordering the respondent to refund complainants the amount of Php1,824,550.00 with interest at 6% per annum from the filing of the complaint until finality of the decision and 12% interest from finality until full payment;
3. Ordering the respondent to pay complainant moral damages of Php20,000.00; exemplary damages of Php20,000.00 and Php20,000.00 as attorney's fees and costs of suit.

4. Respondents(sic) to pay this Board administrative fine of Php10,000.00 for violation of Section 23 in relation to Section 38 of P.D. 957.

SO ORDERED.”[4]

On appeal, the HLURB -Board of Commissioners First Division (HLURB-1<sup>st</sup> Division) affirmed the ruling of the Arbiter. Right off the bat, the HLURB-1<sup>st</sup> Division found that the appeal of petitioner is dismissible for failure of petitioner to post an appeal bond in accordance with the 2004 HLURB Rules of Procedure. Nonetheless, the HLURB-1<sup>st</sup> Division still delved on the the merits the case, where it concurred with the finding of the Arbiter that the project is still incomplete warranting the award in favor of the respondents.

Dissatisfied still, the petitioner elevated the case to the Office of the President (OP) which likewise ruled in favor of the respondents. Just like the HLURB-1<sup>st</sup> Division, the OP ratiocinated that the failure of petitioner to post an appeal bond is fatal to its appeal. Similarly, the OP found no cogent reason to disturb the finding of the Arbiter that the project is still in its completion stage giving right to the respondents to seek reimbursement for payments already made by them.

The *fallo* of the decision of the OP dated 23 October 2013 reads:

“WHEREFORE, premises considered, the Decision appealed from is hereby AFFIRMED *in toto*.

SO ORDERED.”[5]

Aggrieved, Calip filed a motion for reconsideration of the above decision, but to no avail. The OP thus decreed as follows:

“WHEREFORE, premises considered, the Motion for Reconsideration is hereby DENIED for lack of merit.

SO ORDERED.”[6]

Undaunted, Calip now comes to this Court *via* this instant Petition for Review and in support thereof, assigns the following errors on the part of the OP, hence:

#### I.

**WHETHER RESPONDENTS ARE ENTITLED TO RESCISSION AND REFUND OF ALL PAYMENTS MADE PLUS INTEREST.**

#### II.

**WHETHER RESPONDENTS ARE ENTITLED TO DAMAGES, ATTORNEY'S FEES, AND LITIGATION EXPENSES, PLUS COST OF SUIT.**

#### III.

**WHETHER PETITIONER IS LIABLE FOR ADMINISTRATIVE FINE.**