

## THIRTEENTH DIVISION

[ C.A.-G.R. SP No. 122601, March 31, 2014 ]

**ECE REALTY & DEVELOPMENT, INC., PETITIONER, VS. SPS.  
ROGELIO AND RUTH DE PERALTA, RESPONDENTS.**

### DECISION

**YBAÑEZ, J.:**

This Petition for Review under Rule 43 of the 1997 Rules of Court seeks to reverse the 10 January 2011 Decision of the Office of the President<sup>[1]</sup> rendered in O.P Case No. 08-F-234 (HLURB Case No. REM-A-071126-0596) the fallo of which reads:

**"WHEREFORE**, in view of the foregoing, the instant appeal is hereby **DISMISSED** for utter lack of merit.

**SO ORDERED."**

#### The Antecedents

The Housing and Land Use Regulatory Board (HLURB for brevity) found in its decision of 9 October 2007<sup>[2]</sup> that petitioner ECE Realty & Development, Inc. (hereinafter referred to as ECE) is the owner and developer of a condominium/subdivision project known as Wyndham Hills Project, located at Lemery, Batangas. On 2 August 1999, respondents Spouses Rogelio and Ruth de Peralta (the Spouses de Peralta likewise for brevity) purchased from petitioner Condominium Unit No. 209-A with an area of 25.2 square meters for a contract price of Five Hundred Sixty-Seven Thousand Pesos (P567,000.00). Respondents paid the corresponding reservation fee of Five Thousand Pesos (P5,000.00) on the same date and the full purchase amount was made on 30 September 1999.<sup>[3]</sup>

The contract to sell<sup>[4]</sup> was formally executed by the parties on 12 October 1999. Under the contract, the unit would be completed and delivered to the spouses by 30 December 2000.<sup>[5]</sup> On 9 September 2002, however, petitioners filed a complaint against ECE before the HLURB Regional Field Office No. IV-A on 9 September 2002 for Rescission of Contract and Damages with Prayer for Writ of Preliminary Attachment<sup>[6]</sup> alleging that the condominium project remained unfinished in total disregard of the terms and conditions embodied in their contract. Likewise alleged was that because the petitioner repeatedly ignored their attempts to be refunded of their payments, the contract to sell should be rescinded.<sup>[7]</sup>

In their Answer with Compulsory Counterclaim,<sup>[8]</sup> petitioner blamed the delay in the completion of the Wyndham Hills Project on three (3) factors: (1) the closure of a

portion of the Diokno Highway to delivery trucks due to a landslide that slowed down the delivery of materials to the project site; (2) the Asian financial crisis which triggered the escalation of prices of goods and the resulting increase of interest rates charged by financial institutions; and (3) the failure of the project's contractors to deliver the needed construction materials and equipment on schedule.<sup>[9]</sup> It also claimed that by then, the subject unit was ready for inspection and turnover to the respondents.<sup>[10]</sup>

On 9 October 2007, Housing and Land Use Arbiter Raymundo A. Foronda rendered a decision, viz:

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

1. Declaring the rescission of the contract as valid;
2. Ordering the respondent to refund complainant the amount of Php572,000.00 with interest of 12% per annum from the filing of the complaint until full payment;
3. Ordering the respondent to pay complainant moral damages of Php5,000.00, exemplary damages of Php5,000.00 and Php10,000.00 as attorney's fees and costs of suit;
4. Respondents 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.**<sup>[11]</sup>"

Respondent appealed the decision of the HLURB Regional Office before the HLURB Board of Commissioners which rendered its decision on 18 March 2008,<sup>[12]</sup> viz:

**"WHEREFORE, premises considered,** the decision appealed from is hereby **MODIFIED** by fixing the rate of interest under directive No. 2 of the said decision at 6% per annum.

Further, the complaint against respondent Ching is dismissed.

The decision, in all other aspects, is **AFFIRMED**.

**SO ORDERED."**

Still unconvinced, ECE appealed the decision before the Office of the President (OP). On 10 January 2011, the OP dismissed the appeal as follows:

**"WHEREFORE**, in view of the foregoing, the instant appeal is hereby **DISMISSED** for utter lack of merit.

**SO ORDERED.**<sup>[13]</sup>"

The motion for reconsideration filed by petitioner was likewise dismissed by the OP in its two-page resolution of 29 November 2011. Hence, the instant petition with the following issues submitted for resolution:

#### Issues

##### I

WHETHER THE RESPONDENTS WERE ENTITLED TO THE RESCISSION OF THE SUBJECT CONTRACT TO SELL;

##### II

WHETHER IT WAS PROPER TO AWARD 6% INTEREST STARTING FROM THE DATE OF THE FILING OF THE COMPLAINT, ASSUMING, BUT WITHOUT CONCEDING, THAT PETITIONER IS LIABLE FOR REFUND;

##### III

WHETHER IT WAS PROPER TO AWARD P5,000.00 EXEMPLARY DAMAGES, P5,000.00 MORAL DAMAGES, P10,000.00 AS AND FOR ATTORNEY'S FEES PLUS ADMINISTRATIVE FINE OF P10,000.00.<sup>[14]</sup>

## **The Ruling of This Court**

The petition has no merit.

Anent the first issue, petitioner argues that rescission of a contract is available only when there is no other remedy. A slight delay in the delivery of the condominium unit should not have paved the way for the immediate rescission especially when the unit was subsequently delivered within a reasonable time from the date of the expected delivery. It noted that respondents opted to exercise their right to rescind despite its offer to deliver the subject unit.<sup>[15]</sup> Petitioner characterized the delay it incurred in the delivery of the unit as slight, negligible and inconsequential and that there was no substantial breach of the terms and conditions of the Contract to Sell.

The target completion date of the condominium unit according to the Contract to Sell entered into by the parties is as follows:

### **COMPLETION**

The developer (herein petitioner) of the PROJECT undertakes to finish the construction of the residential townhouse/condominium building on or before December 30, 2000 unless prevented by force majeure. The term "force majeure" as used herein, besides meaning an Act of God, shall include strikes, lockouts or other industrial disturbances, unavoidable accidents, blow-outs, acts of the public enemy, war, blockade, public riot, fire, flood, explosion, government or municipal restraint, shortage or unavailability of equipment, restrictions on materials or labor or limitations upon the use thereof, delays in transportation and any other cause, whether of the kind specifically enumerated above or otherwise, which is not reasonably within the control of the SELLER; Provided, that, if on account of the aforementioned conditions there is an impossibility of completing the Project, the SELLER may consider itself relieved of any obligation arising out of this contract and it shall reimburse without interest, all payments received from the BUYER under and by virtue of this Contract. In any event, all construction on or of the PROJECT shall remain the property of the SELLER.<sup>[16]</sup>

On 24 July 2002, respondents, through counsel, sent a letter to the petitioner demanding the delivery of condominium unit number 209-A or the return of the money paid for its purchase plus fifteen percent (15%) interest.<sup>[17]</sup>

Petitioner avers that it has substantially complied with its obligation since it was able to deliver the subject condominium unit and development of the project, thus, it would be an injustice if rescission of the contract is allowed despite the subsequent delivery since an inconsequential breach in its delivery did not operate to defeat the object of the parties in making the agreement. It submits that having been granted by the HLURB an extension of time until 31 January 2003 to finish the project,<sup>[18]</sup> it follows that the delivery date of the unit was also extended to within a reasonable time from its completion.<sup>[19]</sup>

From the time of the petitioner's original projection that the condominium unit in question would be completed on 30 December 2000 until the new target completion date of 31 January 2003, the period constituted twenty-five (25) months. Despite its averment that it has completed the project and ready to turn the same over to the respondents, a scrutiny of the record failed to show exactly when petitioner made this offer to the latter.

Likewise important is the fact that the Asian financial crisis which directly and adversely affected mainly the construction and real estate industry, proffered by the petitioner as one of the reasons for its failure to complete its Wyndham Hills Project as originally scheduled, occurred in 1997. The contract to sell subject of the rescission was entered into by the parties only on 12 October 1999. Clearly therefore the crisis was on the wane if not completely over when the parties entered into the said contract. Even granting that the financial crisis was still prevalent at that time, the Supreme Court has already ruled that the same did not constitute a valid justification to renege on obligations.<sup>[20]</sup> The same view was emphatically stressed in the earlier case of *Mondragon Leisure and Resorts Corporation vs. Court of Appeals, et. al.*<sup>[21]</sup> when it was held that the Asian financial crisis in 1997 is not among the fortuitous events contemplated under Article 1174 of the Civil Code which provides:

**Art. 1174.** Except in cases expressly specified by the law, or when it is otherwise declared by stipulation or when the nature of the obligation requires the assumption of risk, no person shall be responsible for those events which could not be foreseen, or which though foreseen, were inevitable.

Under this Article, to exempt the obligor from liability for a breach of an obligation due to an act of God or *force majeure*, the following must concur: (a) the cause of the breach of the obligation must be independent of the will of the debtor; (b) the event must be either unforeseeable or unavoidable; (c) the event must be such as to render it impossible for the debtor to fulfill his obligation in a normal manner; and (d) the debtor must be free from any participation in, or aggravation of the injury to the creditor.<sup>[22]</sup>

While it is quite unfortunate that petitioner may have met difficulty meeting its self-imposed schedule in completing its real estate project, there is no denying the conceded fact that a real estate enterprise engaged in the pre-selling of condominium units is a master in projections on commodities and currency movements and business risks. The fluctuating movement of the Philippine peso in the foreign exchange market is an everyday occurrence, and fluctuations in currency exchange rates happens everyday, thus, not an instance of *caso fortuito*.<sup>[23]</sup>

In ruling against the petitioner, Arbiter Foronda held that the temporary closure of roads due to typhoon cannot justify the project's delay for an unreasonable length of time.<sup>[24]</sup> As the arbiter further observed in his 9 October 2007 decision, *viz*:

To substantiate the complainant's argument that the project indeed is incomplete, the Ocular Inspection conducted by this Office reveals that