

EIGHTH DIVISION

[CA-G.R. SP NO. 118320, October 31, 2014]

FILINVEST ALABANG, INC., PETITIONER, VS. MA. DANELI S. FAJARDO, RESPONDENT.

[CA-G.R. SP NO. 121561]

EAST WEST BANKING CORPORATION, PETITIONER, VS. MA. DANELI S. FAJARDO, RESPONDENT.

DECISION

GARCIA-FERNANDEZ, J.:

This is a consolidated petition for review^[1] under Rule 43 of the Revised Rules of Court, as amended seeking to nullify and set aside the decision dated February 7, 2011, promulgated by the Office of the President (OP) through Executive Secretary Paquito S. Ochoa, Jr. in OP Case No. 08-J-419.

The facts of the case are as follows:

Petitioner Filinvest Alabang, Inc. (FAI) is engaged in the business of real estate development while petitioner East West Banking Corporation (EWBC) is its affiliate bank. Filinvest Development Corporation is the common parent company of the petitioners.

In July 2002, an agent of FAI approached respondent Ma. Daneli Fajardo and proposed a condominium project called Pioneer Pointe, a 28-storey condominium building located on a land along Pioneer Street, Mandaluyong City and owned by EWBC. Its promotional fact sheet stated that Pioneer Pointe has a "shared development concept", wherein the buyers are considered investors, co-developers and co-owners of the condominium project who can acquire units therein at a price equivalent to the cost used for building them; that the investors shall pool their capital contributions to finance the construction of the condominium project; and that its estimated year of completion is in 2005.

In August 2002, respondent entered into a Project Investment Agreement with FAI for the purchase of Unit UGF-02 of the condominium project at the price of P1,611,200.00, payable in 37 monthly installments to EWBC as the trustee bank starting August 25, 2002. These monthly installments were denominated as "capital contributions". FAI was designated as the Project Manager of the condominium project.

On March 24, 2004, or more than one year after respondent started paying her monthly capital contributions, FAI informed her that the number of investors was still insufficient to enable it to purchase the land from EWBC.

On March 31, 2005, FAI distributed invitations for the groundbreaking rites of the condominium project. Convinced that the condominium project would not be finished by 2005 as represented by FAI in its fact sheet, respondent demanded the refund of all her payments plus interest, amounting to P1,049,119.34. EWBC refunded to respondent the amount of P524,559.67 while the remaining P560,283.67 was remitted to FAI. This prompted respondent to file a complaint^[2] for full refund of payment against petitioners with the Housing and Land Use Regulatory Board-Expanded National Capital Region Field Office (HLURB-ENCRFO).

On October 16, 2007, the HLURB-ENCRFO Arbiter rendered a decision^[3] dismissing the complaint for lack of merit but ordering FAI to immediately apply for and secure a Certificate of Registration and License to Sell for the subject condominium project.

Respondent appealed the decision of the HLURB-ENCRFO Arbiter to the Housing and Land Use Regulatory Board-Board of Commissioners (HLURB-BOC). On September 25, 2008, the HLURB-BOC rendered a decision^[4], the dispositive portion of which reads:

"WHEREFORE, the instant appeal is GRANTED. The decision of the ENCRFO dated October 16, 2007 is MODIFIED. Hence, the respondents are ordered to refund to the complainant the sum of Php560,283.67, with interest at the rate of 6% per annum reckoned from July 21, 2005, the date of the filing of the complaint. Respondent FAI is also ordered to immediately apply for and secure a Certificate of Registration and License to Sell for the subject Pioneer Pointe condominium project.

Let a copy of the decision be furnished the ENCRFO's Monitoring Unit for further monitoring action on the subject project.

SO ORDERED."

FAI and EWBC appealed separately to the Office of the President (OP). On February 7, 2011, the OP rendered a decision^[5] finding no reversible error in the decision of the HLURB-BOC, the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing, the instant appeals separately filed by appellants Filinvest Alabang, Inc. and East West Banking Corp. are hereby DISMISSED for lack of merit.

SO ORDERED."

Aggrieved by the aforementioned decision, EWBC filed a motion for reconsideration, ^[6] which was denied by the OP. On the other hand, FAI did not file a motion for reconsideration but filed a petition for review^[7] with the Court of Appeals under Rule 43 of the Rules of Court, as amended. EWBC also filed a petition for review^[8] with this Court under Rule 43 of the Rules of Court, as amended.

On November 21, 2011, respondent filed a motion For consolidation^[9] which was granted by this Court on December 21, 2011^[10] of the two petitions.

Petitioners FAI and EWBC raised the following issues for the determination of this Court:

I

WHETHER THE OFFICE OF THE PRESIDENT GRAVELY ERRED WHEN IT AFFIRMED THE HLURB'S ORDER NOTWITHSTANDING THE LACK OF JURISDICTION OF THE HLURB OVER THE SUBJECT MATTER OF THE COMPLAINT.

II

WHETHER THE OFFICE OF THE PRESIDENT GRAVELY ERRED WHEN IT AFFIRMED THE HLURB'S ORDER FOR PETITIONERS TO REFUND ALL PAYMENTS MADE BY RESPONDENT, THEREBY DISREGARDING THE PROVISIONS OF THE INVESTMENT AND TRUST AGREEMENTS EXECUTED BY THE PARTIES.

FAI contends that the HLURB had no jurisdiction over the case which does not involve sale of a condominium unit; that respondent is not a buyer but a project investor who participated in the contribution of capital to finance the condominium project; that respondent's complaint should have been lodged in the regular courts; that since respondent paid P990,887.94 only or less than the committed investment, FAI had no obligation to deliver and process the transfer of ownership of the subject condominium unit to her; that respondent had no right to demand ownership of the subject condominium unit until full payment of her agreed capital contribution; and that it has no obligation to refund to respondent the total amount of her capital contributions because the latter's withdrawal from the project constitutes an act of default which entitles her to 50% only of all her cash contributions minus any amount due to FAI.

For its part, EWBC contends that it cannot be held liable with FAI for the refund of respondent's contributions; that respondent cannot invoke the provisions of the Investment Agreement against it because it was not a party to it; that it had complied its obligations under the Trust Agreement completely when it released to respondent the amount equivalent to 50% of her total contributions; and that the scope of the regulatory and adjudicatory functions of the HLURB does not include the power to regulate and supervise banking operations.

The petition is devoid of merit.

It is a settled rule that the jurisdiction of the HLURB to hear and decide cases is determined by the nature of the cause of action, the subject matter or property involved and the parties.^[11]

Section 2 (b) of Presidential Decree (P.D.) No. 957^[12] provides:

Section 2. Definition of Terms When Used in this Decree, the following terms shall, unless the context otherwise indicates, have the following respective meanings:

xxx

(b) Sale or sell. "Sale" or "sell" shall include every disposition, or attempt to dispose, for a valuable consideration, of a subdivision lot, including the building and other improvements thereof, if any, in a subdivision project or a condominium unit in a condominium project. "Sale" and "sell" shall also include a contract to sell, a contract of purchase and sale, an exchange, an attempt to sell, an option of sale or purchase, a solicitation of a sale, or an offer to sell, directly or by an agent, or by a circular, letter, advertisement or otherwise.

A privilege given to a member of a cooperative, corporation, partnership, or any association and/or the issuance of a certificate or receipt evidencing or giving the right of participation in, or right to, any land in consideration of payment of the membership fee or dues, shall be deemed a sale within the meaning of this definition.

This Court finds no error in the conclusion of the OP that the transaction involved in this case is considered a sale under the abovesited provision.

Based on the record, FAI disposed of the Pioneer Pointe condominium project by offering units thereof to investors in the guise of shared investments. FAI pre-sold units of the Pioneer Pointe condominium project to investors, whose contributions were used to construct and develop the same. Respondent, as one of the investors, paid monthly capital contributions in exchange for a specific condominium unit. In essence, ownership and title over the condominium unit were reserved to FAI as developer and EWBC as owner of the land where the condominium is built, until respondent, the buyer pays the purchase price in full. Clearly, the subject transaction is one of sale within the meaning and intention of Section 2(b) of P.D. No. 957. It is of no moment that the subject transaction was denominated as an investment agreement. Contracts are not defined by the name or title given by the parties thereto but by principles of law.^[13]

In *Maria Luisa Park Association, Inc. vs. Almendras*^[14], the Supreme Court ruled:

The provisions of P.D. No. 957 were intended to encompass all questions regarding subdivisions and condominiums. The intention was aimed at providing for an appropriate government agency, the HLURB, to which all parties aggrieved in the implementation of provisions and the enforcement of contractual rights with respect to said category of real estate may take