

FOURTH DIVISION

[CA-G.R. SP No. 130946, November 20, 2014]

ECE REALTY & DEVELOPMENT, INC., PETITIONER, VS. NILDA O. SERAZON, RESPONDENT.

D E C I S I O N

CARANDANG, J.:

This is a petition for review under Rule 43 of the Rules of Court which seeks to reverse and set aside the Decision^[1] dated February 27, 2013 of the Office of the President affirming the Decision^[2] dated July 30, 2009 of the Board of Commissioners, Housing and Land Use Regulatory Board (HLURB). Likewise assailed is the Office of the President's Resolution^[3] dated June 26, 2013 which denied petitioner's Motion for Reconsideration.

The facts of the case:

Sometime in the later part of 1996, petitioner ECE Realty and Development, Inc. ("ECE") and Emilio Ching, its President, offered to respondent Nila O. Serazon on a "pre-selling basis" one of the units of their condominium project named Balagtas Royale Mansion located at the corner of Balagas and Leveriza Streets, Pasay City, Metro Manila. They subsequently entered into a Contract to Sell^[4] concerning the purchase of Unit 2005 with an area of fifty-nine (59) square meters in the amount of P2,224,300.00. Petitioner was obligated under the Contract to Sell to deliver the subject unit on May 31, 1998. However, respondent was able to occupy the same only on September 17, 1998. Despite the occupancy by respondent, finishing touches of the subject unit was then still "on-going" to the annoyance of respondent.

Respondent was able to fully pay the consideration of the subject unit on March 20, 2000.

In the second quarter of 2000, several unit owners started complaining when they discovered that the area and size of the unit they purchased from petitioner differs from what appears in their respective Condominium Certificate of Title. In view of the discovery, respondent made a request to the office of the HLURB to conduct a survey and actual measurement on the subject unit. The HLURB Regional Office conducted actual measurement of the subject unit and found that her unit is only 53.2507 square meters, short of 5.7493 square meters from the 59 square meters she purchased.^[5]

Respondent made several verbal and written demands against petitioner for the refund of the value of the deficiency of the area plus interest thereof, completion of the amenities and settlement for the breach of contract. Despite a final demand,

petitioner failed and refused to comply. Hence, respondent filed this complaint against petitioner ECE and Emilio Ching for specific performance and damages specifically the refund of the purchase price corresponding to the deficiency in the floor area of the subject unit purchased by respondent.

In its Answer^[6], petitioner ECE alleged that the complaint states no cause of action; the HLURB Expanded National Capital Region Field Office has no jurisdiction over the subject matter of the claim; and the cause of action of the complainant has prescribed. Petitioner claimed that the criteria in the measurement of respondent's unit is provided in the Master Deed of the Balagtas Villas and Balagtas Royale Mansion Condominium Project. Further, petitioner averred that the condominium unit of respondent has long been turned-over and occupied by her since September 17, 1998; hence, she is now estopped to pose the issue on delayed delivery after accepting the turn-over of her condominium unit. On the other hand, Ching countered that the complaint states no cause of action against him for he merely acted as an agent of petitioner ECE, as its President and not in his personal capacity, hence, he incurs no personal liability. Moreover, Ching has always acted in good faith in running the material operations of petitioner ECE.

After the submission of the parties' respective position paper, the Housing and Land Use Arbiter, Atty. Ma. Lorina J. Rigor, rendered a Decision^[7] dated August 9, 2007, the dispositive portion of which reads:

"WHEREFORE, in the light of the foregoing, judgment is hereby rendered as follows:

1. Ordering respondent ECE Realty and Development Inc. to refund to complainant Nilda O. Serazon the amount of P216,748.61 corresponding to the 5.7493-square meter difference in the area of subject unit plus the corresponding interests on said amount, with interest at the legal rate reckoned from the filing of the instant case until fully paid;
2. Ordering respondent ECE Realty and Development, Inc. to pay to complainant the amount of P20,000.00 as and by way of moral damages;
3. Ordering respondent ECE Realty and Development, Inc. to pay to complainant the amount of P20,000.00 as and by way of exemplary damages; and
4. Ordering respondent ECE Realty and Development, Inc. to pay to complainant the amount of P10,000.00 as and by way of attorney's fees.

SO ORDERED."

Petitioner ECE and Ching interposed an appeal before the Board of Commissioners of the HLURB, which rendered a Decision^[8] on July 30, 2009 denying petitioner ECE and Ching's appeal and affirming with modification the August 9, 2007 Decision of the Regional Office. The Board of Commissioners dismissed the complaint against Emilio Ching stating that no acts were attributed to Ching in his personal capacity.

Petitioner ECE elevated the case to the Office of the President essentially invoking the case of *Donata Lim vs. ECE Realty and Development Co., Inc.* which was decided by the HLURB Board of Commissioners on January 23, 2004.

On February 27, 2013, the Office of the President issued a Decision affirming *in toto* the Board of Commissioner's ruling.

Petitioner's motion for reconsideration having been denied in the June 26, 2013 Resolution, petitioner filed the instant petition for review with the following issues, to wit:

I.

ON PRESCRIPTION: WHETHER OR NOT THE OFFICE OF THE PRESIDENT COMMITTED GRAVE AND REVERSIBLE ERROR IN TOTALLY IGNORING AND DISREGARDING ARTICLE 1543 OF THE CIVIL CODE IN FAVOR OF RESPONDENT SERAZON.

II.

WHETHER OR NOT THE OFFICE OF THE PRESIDENT COMMITTED GRAVE AND REVERSIBLE ERROR WHEN IT AFFIRMED THE DECISION OF THE HLURB WHICH IGNORED AND DISREGARDED ITS VERY OWN DECISION IN THE EARLIER CITED CASE OF DONATA LIM VS. ECE REALTY & DEVELOPMENT CO., INC. INVOLVING THE SAME ISSUE IN THE SAME CONDOMINIUM PROJECT OF PETITIONER HEREIN.

III.

WHETHER OR NOT THE OFFICE OF THE PRESIDENT COMMITTED GRAVE AND REVERSIBLE ERROR WHEN IT AFFIRMED THE RULING OF THE HLURB THAT THE MASTER DEED OF 27 MARCH 1996 SHOULD NOT BE OVERRULED BY THE AMENDED MASTER DEED OF NOVEMBER, 1996.

IV.

WHETHER OR NOT THE OFFICE OF THE PRESIDENT COMMITTED GRAVE AND REVERSIBLE ERROR IN AFFIRMING THE AWARD TO RESPONDENT HER PRAYER FOR REFUND AND DAMAGES.

Petitioner invokes Article 1543 of the Civil Code in claiming that respondent's cause of action had already prescribed. Since the subject unit was delivered to and accepted by respondent on September 17, 1998, she had six (6) months or up to March 15, 1999 to claim the value of the difference in the area of the subject unit. However, petitioner averred that respondent only filed the complaint on March 1, 2004, or after almost five (5) years from the delivery of the subject unit. Moreover, petitioner asserts that the Amended Master Deed of November 1996 should prevail over the March 1996 Master Deed in the measurement of the area of the condominium unit not only of respondent but of all the other condominium units.

The petition is bereft of merit.