ECE REALTY & DEVELOPMENT, INC., PETITIONER, V. SPS. MAY PAZ C. RODRIGUEZ AND EDUARDO M. RODRIGUEZ, RESPONDENTS.

Ponente: ELBINIAS, J.

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ELBINIAS, J.:

For disposition is a Petition for Review[1] filed under Rule 43 of the Rules of Court. The Petition assails the Decision[2] dated July 13, 2009 of the Office of the President (“OP” for brevity), which affirmed the Decision[3] dated February 15, 2008 of the Housing and Land Use Regulatory Board (“HLURB” for brevity) in HLURB CASE NO. REM-A-071011-0486. The Petition also questions OP's Resolution[4] dated December 9, 2009, which denied petitioner's eventual Motion for Reconsideration.[5]

The antecedent facts are those as stated in the OP's Decision[6] dated July 13, 2009 as follows:

> “Appellees, spouses May Paz and Eduardo Rodriguez (hereinafter 'Appellees') (respondents here), entered into a contract to sell with appellant (petitioner here) on November 5, 1996. The subject of the contract to sell is a condominium unit at Central Park Condominium II located at Jorge Street, Pasay City, a project owned and developed by the appellant (petitioner). The consideration for the condominium unit was One Million Two Hundred Eighty Six Thousand Eight Hundred Fifty Six (P 1,286,856.00), payable in installments. The contract stipulated that the condominium unit will be turned over to the appellees (respondents) in April 1999.
>
> When the appellees (respondents) visited the condominium site, they saw that it would not be finished by April 1999. By reason thereof, appellees (respondents) suspended their payments to the appellant (petitioner). By that time, they have already paid a total of Five Hundred Forty Eight Thousand One Hundred Ninety Eight Pesos (P 548,198.00) to the appellant (petitioner).
>
> April 1999 passed, and the condominium project was not finished. Appellees (respondents) sent demand letters on March 2000 and December 2000 to the appellant (petitioner) for refund of the amounts they have paid, but the latter did not heed their calls.
>
> On March 2001, appellees (respondents) received a letter from the appellant (petitioner) saying that the subject condominium unit was ready for inspection, but the issue of the demand for refund was not resolved.
>
> Aggrieved with the delay on the refund, the appellees (respondents) lodged a complaint before the HLURB-ENCRFO. Appellees (respondents) insisted that they suspended payment to the appellant (petitioner) because of the inevitable delay in the delivery of the subject property. On the other hand, appellant (petitioner) argued that the delay in the delivery was due to events beyond its control.”[7] (Emphasis supplied)

On August 3, 2007, the HLURB-Expanded National Capital Region Field Office (“ENCRFO” for brevity) rendered a Decision[8] in favor of respondents Spouses May Paz C. Rodriguez and Eduardo M. Rodriguez (“respondents” for brevity), and ordered petitioner ECE Realty & Development, Inc. (“petitioner” for brevity) to pay respondents the amount of Php 548,198.00 at legal interests reckoned from the date of respondents' demand, and Php 50,000.00 as Attorney's Fees.[9]

Petitioner then filed an Appeal from ENCRFO's Decision[10] of August 3, 2007 to the HLURB. On February 15,

2008, the HLURB rendered a Decision[11] affirming the ENCRFO's Decision.[12]

Upon petitioner's appeal, the OP rendered the assailed Decision[13] dated July 13, 2009, which affirmed in toto the HLURB's Decision[14] of February 15, 2008.[15]

After petitioner's Motion for Reconsideration[16] was denied by the OP in the assailed Resolution[17] dated December 9, 2009, petitioner filed the Petition for Review[18] at bench, praying that:

> "WHEREFORE, in view of the foregoing, it is most respectfully prayed of this Honorable Court that a DECISION be rendered reversing the Decision of the Honorable Office of the President, Board of Commissioners and the HLU Arbiter and order the following:
>
> 1. Dismiss the complaint filed by the respondent;
>
> 2. Order the cancellation/rescission of the Contract to Sell and order the forfeiture of all payments made by respondent, or in the alternative, order the respondent to pay to the petitioner ECE the following: (a) All past due amortizations of the respondent on her condominium unit based on the schedule provided under respondent's Statement of Account and Contract to Sell in accordance with the other rulings of this Honorable Court; and (b) P100,000.00 as attorney's fees;
>
> Other reliefs, just and equitable, are likewise prayed for."[19]

Petitioner raised the following assignment of errors:

> **"I**
>
> THE HONORABLE OFFICE OF THE PRESIDENT FATALLY ERRED IN FINDING THAT RESPONDENTS WERE ENTITLED TO RESCISSION AND REFUND.
>
> II
>
> THE HONORABLE OFFICE OF THE PRESIDENT LIKEWISE GRAVELY ERRED IN AWARDING LEGAL INTEREST STARTING FROM DATE OF DEMAND.
>
> III
>
> THE HONORABLE OFFICE OF THE PRESIDENT ERRED AS GRAVELY IN AFFIRMING THE RULING OF THE BOARD OF COMMISSIONERS IN AWARDING P50,000.00 AS ATTORNEY'S FEES IN FAVOR OF RESPONDENTS."[20] (Emphasis was made in the original)

Contrary to petitioner's arguments in its assignment of error I, respondents were entitled to rescind the Contract to Sell[21] with petitioner, and to claim refund for the amount that respondents paid to petitioner.

Petitioner had raised the following arguments:

> "9. It must be stressed at this stage that the right to rescind is not absolute and is available only when there is no other remedy. xxx xxx
>
> 10. It must be stressed likewise that respondents opted to exercise their right to rescind, not only under the above circumstances, but in disregard of the offer and constructive delivery of the unit sold.
>
> 11. Finally, from all the foregoing, the chosen course of action of respondents should not have been allowed as the right to rescind was, at the very least, premature, when they availed of the same. In other words, respondents sought to rescind the contract when circumstances do not warrant for rescission. To reiterate, respondents stopped payment of their monthly amortizations in August 1998, a few months before the delivery date of the unit in April 1999 as specified in the Contract to Sell. In yet another case, though of an entirely

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> different set of facts, but which is very relevant and enlightening in essence as it likewise referred to a wrongful exercise of a right, it was there said: 'It must be remembered that the exercise of a right ends when the right disappears, and it disappears when it is abused especially to the prejudice of others,' xxx

xxx

> 13. Respondents are not entitled to a rescission thereof because rescission cannot be availed of when the breach of contract is only slight or casual, and not so substantial and fundamental as to defeat the object of the parties in making the contract. Assuming, but without conceding, that there was delay in the delivery of the subject unit, the delay is not a substantial breach so as to warrant rescission ESPECIALLY IF THE CONDOMINIUM UNIT WAS IN FACT CONSTRUCTIVELY DELIVERED AND IS BEING IN THE EFFECTIVE CONTROL AND USE BY RESPONDENTS if they opt to do so because the essence and primordial reason of the contract to sell is not limited to the development of the project's amenities but for development of the building, including the individual units which petitioner was able to effectively deliver to respondents.
>
> 14. Parenthetically, petitioner ECE substantially complied with what was incumbent upon it under the terms and conditions of the Contract to Sell, e.g. delivery of the subject condominium unit and development of the Project. The Project is not uninhabitable as to conclude and categorize petitioner as one of those contemplated under P.D. 957 as unscrupulous developers.
>
> 15. Rather, the essence of said Contract to Sell that impelled the parties into contracting into it is the delivery of a condominium unit to respondents complete with facilities and amenities and in this case, petitioner was not amiss in building and delivering the subject condominium unit. An inconsequential breach in the date of delivery of the subject condominium does not operate to defeat the object of the parties in making the agreement."[22] (Emphasis supplied; underlinings made in the original)

Prevailing over petitioner's arguments however, is that petitioner breached its obligation to respondents. This is because, as the records revealed, petitioner failed to develop and to deliver the condominium unit ("subject unit" for brevity) to respondents on April 30, 1999, which was the date of delivery stated in the Contract to Sell[23]. In fact, it was only on March 7, 2001, or almost two (2) years after April 30, 1999 that petitioner sent a Letter[24] to respondents informing the latter that the subject unit was ready for inspection. That a party is entitled to rescind the Contract to Sell, such as respondents, when the other party, such as petitioner, breached its obligation is pursuant to the Supreme Court's declaration in Spouses Delfin O. Tumibay and Aurora T. Tumibay-deceased; Grace Julie Ann Tumibay Manuel, legal representative vs. Spouses Melvin A. Lopez and Rowena Gay T. Visitacion Lopez, G.R. No. 171692, June 3, 2013, to wit:

> "The contract to sell is rescissible.
>
> Article 1191 of the Civil Code provides:
>
> Art. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.
>
> The injured party may choose between fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission even after he has chosen fulfillment, if the latter should become impossible. The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period. xxx
>
> As a general rule, 'rescission will not be permitted for a slight or casual breach of the contract, but only for such breaches as are substantial and fundamental as to defeat the object of the parties in making the agreement." (Emphasis Supplied)

Moreover, by petitioner's failure to complete the development of the condominium project within the period

agreed by the parties, the payments made by respondents could not therefore be forfeited in favor of petitioner. That this is the consequence is in accordance with Section 23 of Presidential Decree 957, otherwise known as "The Subdivision and Condominium Buyers' Protective Decree", as follows:

> "Section 23. Non-Forfeiture of Payments. No installment payment made by a buyer in a subdivision or condominium project for the lot or unit he contracted to buy shall be forfeited in favor of the owner or developer when the buyer, after due notice to the owner or developer, desists from further payment due to the failure of the owner or developer to develop the subdivision or condominium project according to the approved plans and within the time limit for complying with the same. Such buyer may, at his option, be reimbursed the total amount paid including amortization interests but excluding delinquency interests, with interest thereon at the legal rate." (Emphasis Supplied)

Given that petitioner breached its obligation, respondents are also entitled to the award of legal interest, contrary to petitioner's argument in its assignment of error II. Such interest should be reckoned from the date of respondents' demand for refund, or on March 8, 2000[25]. That interest should be reckoned from the date of demand follows this declaration of the Supreme Court in Hermojina Estores vs. Spouses Arturo and Laura Supangan, G.R. No. 175139, April 18, 2012:

> "Since the date of demand which is September 27, 2000 was satisfactorily established during trial, then the interest rate of 12% should be reckoned from said date of demand until the principal amount and the interest thereon is fully satisfied. xxx" (Emphasis Supplied)

Considering also that respondents were compelled to litigate in order to protect their interest, then contrary to petitioner's assignment of error III, the OP properly affirmed the HLURB and the ENCRFO's award of Attorney's Fees to respondents. This, also considering that the reason for the award was clearly stated in the ENCRFO's Decision, which was that "the failure of [petitioner] to heed [respondents'] demand for refund has constrained [respondents] to engage the services of counsel in order to protect [their] rights and interests"[26]. That the award of Attorney's Fees is proper when the party, such as respondents, was constrained to engage the services of a legal counsel to file a suit is pursuant to the Supreme Court's pronouncement in Gotesco Properties, Inc., et al. vs. Spouses Eugenio and Angelina Fajardo, G.R. No. 201167 , February 27, 2013, as follows:

> "Furthermore, the Court finds that there is proper legal basis to accord moral and exemplary damages and attorney's fees, including costs of suit. Verily, GPI's unjustified failure to comply with its obligations as above-discussed caused Sps. Fajardo serious anxiety, mental anguish and sleepless nights, thereby justifying the award of moral damages. In the same vein, the payment of exemplary damages remains in order so as to prevent similarly minded subdivision developers to commit the same transgression. And finally, considering that Sps. Fajardo were constrained to engage the services of counsel to file this suit, the award of attorney's fees must be likewise sustained." (Emphasis supplied)

Given all these, no cogent or compelling reason was shown to justify any deviation from the following findings of the OP, which were in accordance with the facts and the law:

> "After a careful study of the case, this Office finds no cogent reason to reverse and set aside the Decision of the HLURB. The HLURB was correct in holding that the appellees have the right to suspend payments and be reimbursed. Section 23 of P.D. 957 provides that:
>
> 'Section 23. Non-Forfeiture of Payments – No installment payment made by a buyer in a subdivision or condominium project for the lot or unit he contracted to buy shall be forfeited in favor of the owner or developer when the buyer, after due notice to the owner or developer, desists from further payment due to the failure of the owner or developer to develop the subdivision or condominium project according to the approved plans and within the time limit for complying the same. Such buyer may, at his option, be reimbursed the total

> amount paid including amortization interests but excluding delinquency interests, with interest thereon at the legal rate.'

The argument of appellant that the appellees committed breach of contract when they suspended their payments is, to our mind, a mere afterbrought. Appellees have long demanded for the refund of the amounts they paid but appellant refused to heed their calls. Instead, they received a notice that the subject property is ready for viewing. Further, under the subject contract to sell, the condominium unit was supposed to be delivered in April 1999, but almost two years have passed before appellant notified the appellees that their property is ready for viewing. The finding that there was delay in the delivery of the subject property is therefore very clear.

The HLURB is correct when it stated that appellees are entitled to a refund because of the apparent delay in the delivery of the subject property. The law authorizes suspension of payment and accords the buyer the option to be reimbursed of all payments made including amortization interests but excluding delinquency interest, with interest thereon at the legal rate.

As for the award of attorney's fees, the HLURB is likewise correct when it held that appellees are entitled to such award. The appellees were constrained to bring suit after the appellant failed to act on their demand for a refund.

It bears stressing that the avowed purpose of P.D. 957 is that innocent lot/unit buyers be protected against fraudulent practices and manipulations committed by the subdivision/condominium owners, developers, operator, and/or sellers, and the HLURB is mandated to effect this purpose. In the case at bar, the HLURB acted correctly when it affirmed the Decision of HLURB-ENCRFO."[27] (Emphasis supplied; Italics made in the original)

Indeed, the rule is settled that by reason of the special knowledge and expertise of administrative agencies over matters falling under their jurisdiction, their findings of fact, such as those of ENCRFO as affirmed by HLURB Board of Commissioners and OP, are accorded not only great respect but even finality,[28] especially when supported by substantial evidence, as was so here.

After careful consideration of all the facts, arguments, and issues appearing on the records, as well as of the pertinent laws and jurisprudence, and, in accordance with what is best determined to be just under the circumstances, the following disposition is therefore made on this matter.

GIVEN ALL THESE, the Petition for Review is DENIED.

SO ORDERED.

Dicdican (Chairman) and Macalino,[*] JJ., concur.

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[*] New member vice J. Paredes (inhibited) per raffle dated January 13, 2014.

[1] Rollo, pp. 6 -18

[2] Rollo, pp. 23 - 26

[3] Rollo, pp. 36 - 38

[4] Rollo, pp. 20 - 21

[5] Rollo, pp. 28 - 35

[6] Rollo, pp. 23 - 26

[7] Rollo, pp. 23 – 24

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[8] Rollo, pp. 39 - 41

[9] Rollo, p. 41

[10] Rollo, pp. 39 - 41

[11] Rollo, pp. 36 - 38

[12] Rollo, p. 38

[13] Rollo, pp. 23 - 26

[14] Rollo, pp. 36 - 38

[15] Rollo, p. 26

[16] Rollo, pp. 28 - 35

[17] Rollo, pp. 20 - 21

[18] Rollo, pp. 6 - 18

[19] Rollo, p. 16

[20] Rollo, p. 10

[21] Rollo, pp. 42 - 44

[22] Rollo, pp. 11-13

[23] Rollo, pp. 42 - 44

[24] Rollo, pp. 45

[25] Rollo, pp. 166 - 167

[26] Rollo, p. 41

[27] Rollo, pp. 25-26

[28] Pagayanan R. Hadji-Sirad vs. Civil Service Commission, G.R. No. 182267, August 28, 2009

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