

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

Ponente: GONZALES-SISON, M., J.

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GONZALES-SISON, M., J.:

Before this Court is a Petition for Review[1] 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”[2]

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.[3] 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[st] Division) affirmed the ruling of the Arbiter. Right off the bat, the HLURB-1[st] 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[st] Division still delved on 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[st] 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.

The thrust of petitioner's arguments is that the right of rescission is not an absolute one. Petitioner thus insists that rescission is only permissible where there is a substantial breach of contract which it claims is not present in this case as petitioner is ready and capable to deliver the subject unit. Further, petitioner reiterates its stand that it is still not in delay of its obligation to deliver because the respondents are not updated with their monthly payments. Finally, petitioner asseverates that the award of damages and imposition of administrative fine are improper and have no basis.

We deny the instant Petition for Review.

At the outset, it is apparent that the instant petition deserves an outright dismissal for failure of petitioner to post the necessary appeal bond when it appealed its case to the HLURB-1st Division. Suffice it to state that the posting of an appeal bond equivalent to the amount of award in a money judgment is mandated before any appeal could be entertained pursuant to Section 1(e), Rule XVIII in relation to Section 2(c) of Rule XVI of the 2004 HLURB Rules of Procedure, which was the prevailing rules of procedure at that time.[7] It is settled that the perfection of an appeal within the reglementary period carries with it the duty to post cash or surety bond, as required by law, on time.[8]

Worse, petitioner could not even offer a single explanation as to the absence of such appeal bond. Without it, the decision of the Arbiter should be considered final and executory, as if no appeal was filed before the HLURB-1[st] Division much less before the OP.

Verily, it is axiomatic that final and executory judgments can no longer be attacked by any of the parties or be modified, directly or indirectly, even by the highest court of the land.[9]

Consequently, even if we turn a blind eye to the fatal defect mentioned above, we still find the instant petition bereft of merit.

With respect to the issue of delivery date for the subject unit, we adopt the unified findings of the Arbiter, the HLURB-1st Division and the OP on this matter. Indeed, the Contract to Sell between the parties is explicit that the amount of down payment from which the delivery date shall be reckoned is only P789,253.32. Petitioner is

thus precluded from claiming that the subsequent P29,956.50 monthly payments for 24 months form part and parcel of the down payment. On this note, basic is the principle that a contract is the law between the parties, and its stipulations are binding on them, unless the contract is contrary to law, morals, good customs, public order or public policy.[10]

Without question, the respondents have already paid the down payment in full and it was incumbent upon petitioner to turn over the subject unit to the respondents 18 months after, which date falls on July 2003. The failure of petitioner to deliver the subject unit on said date rendered it in delay of its obligation irrespective of whether or not the respondents continued with their monthly payments.

Perfunctorily, such breach of obligation is not a slight one as otherwise maintained by petitioner. In 25 January 2005, the HLURB Regional Office made an ocular inspection of the Project, and it noticed that the “roads, curbs & gutter, drainage & sewerage system, electrical distribution system, housing/condominium remain incomplete.”[11] Thus, for more than a year and counting, petitioner has failed to fulfill its promise to deliver the subject unit to the respondents in accordance with their agreement, which delay could only be described as substantial and oppressive at the same time.

Invariably, it is settled that by reason of the special knowledge and expertise of said administrative agencies over matters falling under their jurisdiction, they are in a better position to pass judgment thereon, thus, their findings of fact in that regard are generally accorded great respect, if not finality, by the courts. The findings of fact of an administrative agency must be respected as long as they are supported by substantial evidence, even if such evidence might not be overwhelming or even preponderant. It is not the task of an appellate court to weigh once more the evidence submitted before the administrative body and to substitute its own judgment for that of the administrative agency in respect of sufficiency of evidence.[12]

On this score, the respondents are granted the right to have the Contract to Sell rescinded pursuant to Article 1191 of the New Civil Code, viz.:

“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 the 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.

This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with articles 1385 and 1388 and the Mortgage Law.” (underscoring supplied)

Conformably, the right of the respondents to recover payments already made emanates from Article 1385 of the New Civil Code which provides:

“ART. 1385. Rescission creates the obligation to return the things which were the object of the contract, together with their fruits, and the price with its interest; consequently, it can be carried out only when he who demands rescission can return whatever he may be obligated to restore.

Neither shall rescission take place when the things which are the object of the contract are legally in the possession of third persons who did not act in bad faith.

In this case, indemnity for damages may be demanded from the person causing the loss.” (underscoring supplied)

Furthermore, the Court finds that there is proper legal basis to accord moral and exemplary damages and attorney's fees, including costs of suit. Certainly, petitioner's unjustified failure to comply with its obligation as above-discussed caused the respondents 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 developers to commit the same transgression. And finally, considering that respondents were constrained to engage the services of counsel to file this suit, the award of attorney's fees must be likewise sustained.

Finally, as to administrative fine, the same is warranted for failure of petitioner to deliver the subject unit on due date and in accordance with Section 38 of P.D. 957 otherwise known as The Subdivision And Condominium Buyers' Protective Decree. The said provision states:

“Section 38. Administrative Fines. The Authority may prescribe and impose fines not exceeding ten thousand pesos for violations of the provisions of this Decree or of any rule or regulation thereunder. Fines shall be payable to the Authority and enforceable through writs of execution in accordance with the provisions of the Rules of Court.”

WHEREFORE, premises considered, the instant Petition for Review is DENIED for lack of merit and the assailed decision and resolution of the Office of the President dated 23 October 2013 and 03 April 2014 respectively are hereby AFFIRMED.

SO ORDERED.

De Guia-Salvador, R. Chairperson and Cruz, R. JJ., concur.

[1] Rollo, p. 18.

[2] Rollo, p. 88.

[3] Section 23 of P.D. 957 .- 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.

[4] Rollo, pp. 120-121.

[5] Rollo, p. 55.

[6] Rollo, pp. 40.

[7] Section 1(e), Rule XVIII - “Section 1. Dismissal of appeal. - The appeal shall be dismissed on any of the following grounds:

xxx.

e. Failure to post an appeal bond, as required by Section 2(c) of Rule XVI.

Section 2(c), Rule XVI - “Section 2. Contents of the appeal memorandum. - xxx.

c. In case of money judgment, an appeal bond satisfactory to the Board equivalent of the award excluding interest, damages and attorney's fees.”

[8] See *Italian Village Restaurant vs. NLRC*, G.R. No. 95594, 11 March 1992.

[9] *Peralta v. Hon. De Leon*, G.R. No. 187978, 24 November 2010.

[10] *Mendiola v. Commerz Trading Int'l Inc.*, G.R. No. 200895, 31 July 2013.

[11] *Rollo*, p. 120.

[12] *Amigo Manufacturing, Inc. v. Cluett Peobody Co., Inc.*, G.R. No. 139300, 14 March 2001, citing *Villaflor v. CA*, G.R. No. 95694, 9 October 1997.

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