

THIRD DIVISION

[G.R. No. 212689, August 11, 2014]

**ECE REALTY AND DEVELOPMENT, INC., PETITIONER, VS.
HAYDYN HERNANDEZ, RESPONDENT.**

R E S O L U T I O N

REYES, J.:

This is a Petition for Review on *Certiorari*^[1] from the Decision^[2] dated November 4, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 120738, which affirmed with modification the Decision^[3] dated January 10, 2011 of the Office of the President (OP) in O.P. Case Number 09-D-152, entitled, "*The Housing and Land Use Regulatory Board and Haydyn Hernandez v. ECE Realty and Development Corporation.*" The *fallo* of the appellate court's decision reads:

We AFFIRM the assailed Decision of the Office of the President in O.P. Case Number 09-D-152, with MODIFICATION: We DIRECT petitioner ECE REALTY AND DEVELOPMENT INC., to pay respondent Haydyn Hernandez, the amount of [?]452,551.65 (representing the total amount respondent Hernandez paid petitioner ECE), plus 6% interest per annum starting 07 September 2006, and 12% interest per annum from the time the judgment becomes final and executor[y], until fully paid.

IT IS SO ORDERED.^[4]

On September 7, 2006, Haydyn Hernandez (respondent) filed a Complaint for specific performance, with damages, against Emir Realty and Development Corporation (EMIR) and ECE Realty and Development Incorporated (ECE) before the Housing and Land Use Regulatory Board Expanded National Capital Region Field Office (HLURB-Regional Office). The respondent alleged that ECE and EMIR, engaged in condominium development and marketing, respectively, sold to him a 30-square meter condominium unit in the "Harrison Mansion" described as Unit 808, Building B, Phase 1 (Unit 808). On July 22, 1997 the respondent paid the reservation fee of P35,000.00, and on August 2, 1997 he paid P104,063.65 to complete the downpayment.^[5] In the parties' Contract to Sell^[6] dated November 5, 1997, EMIR and ECE promised that Unit 808 would be ready for occupancy by December 31, 1999.

EMIR and ECE failed to deliver Unit 808 to the respondent on December 31, 1999, by which date he had already paid a total of P452,551.65. Moreover, the respondent discovered that Unit 808 contained only 26 sq m, not 30 sq m as contracted, thus, he asked for a corresponding reduction in the price by P120,000.00, based on the price per sq m of P30,000.00. Instead, EMIR and ECE

demanded that he settle all his amortizations in arrears with interest. Sometime in 2005, the respondent learned that EMIR and ECE had sold Unit 808 to a third party.^[7]

The respondent in his complaint in the HLURB asked that EMIR and ECE be ordered to accept his payment of the balance of the price of Unit 808, less P120,000.00, without interest; and to pay him moral damages of P500,000.00, actual damages of P100,000.00, exemplary damages of P100,000.00, and attorney's fees of P50,000.00 plus P2,000.00 per appearance fee. If Unit 808 is no longer available, the respondent asked that EMIR and ECE reimburse him the amount of P452,551.65 he paid, plus legal interest.^[8]

In their Answer with Counterclaim, EMIR and ECE sought to dismiss the complaint for lack of cause of action, and to drop EMIR as defendant because it has no contractual relations with the respondent.^[9] They alleged that the respondent unjustifiably refused to accept the turn-over of Unit 808, that he was duly given a Grace Period Notice^[10] that he was in arrears in his monthly amortizations, but the respondent let the said period lapse without settling his past-due amortizations. Thus, ECE was compelled to cancel his contract to sell, invoking Republic Act No. 6552 (An Act to provide protection to buyers of Real Estate on Installment Payments). EMIR and ECE also sought exemplary damages, attorney's fees, and litigation expenses.

On May 12, 2008, the HLURB-Regional Office ordered EMIR and ECE to reimburse the respondent the amount of P452,551.65, plus legal interest, from the filing of the complaint, and to pay the respondent P50,000.00 as moral damages, P50,000.00 as attorney's fees, and P50,000.00 as exemplary damages.^[11]

EMIR and ECE appealed to the HLURB Board of Commissioners, which in its Decision^[12] dated January 23, 2009 upheld the HLURB-Regional Office but dropped EMIR as defendant.

ECE appealed to the OP, but the OP in its Decision^[13] dated January 10, 2011 dismissed ECE's appeal. On July 5, 2011, the OP denied ECE's motion for reconsideration.

On petition for review to the CA, ECE argued that the OP erred in affirming the rescission of the parties' contract to sell and the order to refund the respondent's payments with legal interest from filing of the complaint, along with the award of moral and exemplary damages and attorney's fees to the respondent. ECE pointed out that the respondent did not ask for rescission and refund on account of the delay in the delivery of Unit 808, but only for a reduction in the price. It further argued that interest may be imposed only from finality of judgment. Insisting that it was not in bad faith, ECE sought the deletion of the award for damages and attorney's fees, saying also that they are excessive.

In upholding the OP, the CA cited Section 23 of Presidential Decree (P.D.) No. 957 (*Regulating the Sale of Subdivision Lots and Condominiums, Providing for Penalties for Violations Thereof*), which reads:

Sec. 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.

The CA found that the respondent duly notified ECE that he was suspending his subsequent amortizations because of the delayed delivery of Unit 808. The CA then ruled that under P.D. No. 957, when the owner of the subdivision or condominium fails to develop the same according to the plan within the period agreed, the buyer, after notifying the owner, may desist from paying the balance, and may demand the reimbursement of all that he has paid. ECE failed to deliver Unit 808 on or before December 31, 1999, even as the said unit measured only 26 sq m, not 30 sq m as agreed. As also found by the CA, by ECE's own evidence Unit 808 was ready for inspection only on June 28, 2002, or two and a half years after the agreed date of delivery. But the CA deleted the award of moral and exemplary damages, finding that ECE did not act in bad faith, while sustaining the award of P50,000.00 as attorney's fees pursuant to Article 2208 (2) of the Civil Code, since ECE's act or omission compelled the respondent to litigate.

On the imposition of six percent (6%) interest, the appellate court cites *Eastern Shipping Lines, Inc. v. Court of Appeals*^[14] and in *Fil-Estate Properties, Inc. v. Spouses Go*,^[15] the amount to be refunded being neither a loan nor a forbearance of money, goods or credit.

On petition to this Court, the petitioner ECE reiterated all the arguments it proffered before the CA.

Our Ruling

We resolve to affirm the CA decision with modification, by reducing the interest imposable after finality from twelve percent (12%) to six percent (6%).

Article 2209 of the New Civil Code provides that "If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six per cent per annum." There is no doubt that ECE incurred in delay in delivering the subject condominium unit, for which reason the trial court was justified in awarding interest to the respondent from the filing of his complaint. There being no stipulation as to interest, under Article 2209 the imposable rate is six percent (6%) by way of damages, following the guidelines laid down in the landmark case of *Eastern Shipping Lines v. Court of Appeals*:^[16]