

EN BANC

G.R. No. 182133 – UNITED OVERSEAS BANK OF THE PHILIPPINES, Petitioner, v. THE BOARD OF COMMISSIONERS-HLURB, J.O.S. MANAGING BUILDERS, INC. and EDUPLAN, PHILS., INC., Respondents.

Promulgated:

June 23, 2015

X-----*Portia Aliño-Hormachuelos*-----X

CONCURRING AND DISSENTING OPINION

LEONEN, J.:

The case involves the doctrines on exhaustion of administrative remedies and void mortgage contracts under Section 18 of Presidential Decree No. 957.¹

This is a Petition for Review on Certiorari assailing the Decision dated February 27, 2006 and Resolution dated March 5, 2008 of the Court of Appeals in CA-G.R. SP No. 86401.² The Court of Appeals dismissed petitioner's Petition for Review under Rule 43 of the Rules of Court for failure to exhaust administrative remedies available to petitioner.

Respondent J.O.S. Managing Builders, Inc. (JOS) is the registered owner and developer of Aurora Milestone Tower (the condominium project).³ The condominium project is located on Aurora Boulevard, Quezon City.

JOS mortgaged the condominium project, among other properties, to Far East Bank and Trust Co. (Far East). The properties were security for JOS' loan of ₱112,002,000.00.

However, as requested by JOS, petitioner United Overseas Bank (UOB) assumed the indebtedness of JOS with Far East.⁴ The mortgage was released on April 15, 1997 for ₱200 million, which represented JOS' principal loan plus interest. The mortgaged properties' transfer certificates of title were delivered to UOB as the new mortgagee. UOB did not secure a mortgage clearance from the Housing and Land Use Regulatory Board (HLURB).

¹ Regulating the Sale of Subdivision Lots and Condominiums, Providing Penalties for Violations Thereof (1976).

² *Rollo*, pp. 59-66. The Decision, promulgated on February 27, 2006, was penned by Justice Portia Aliño-Hormachuelos and concurred in by Justices Amelita G. Tolentino and Vicente S.E. Veloso of the Fourth Division, Court of Appeals Manila.

³ *Id.* at 60.

⁴ *Id.* at 61.

JOS failed to pay its loan with UOB.⁵ The real estate mortgage was then foreclosed, and UOB was declared as the highest bidder in the public auction held on March 22, 1999.⁶

In the meantime, on December 16, 1997, JOS and EDUPLAN Phils., Inc. (EDUPLAN) entered into a contract to sell.⁷ The contract covered Unit E, 10th Floor of the condominium project. The cost of the unit was ₱9,028,116.00 payable in installments within six (6) years.

EDUPLAN fully paid JOS on August 24, 1998.⁸ The parties then executed a Deed of Absolute Sale⁹ where it was disclosed that there was a mortgage lien in favor of UOB.¹⁰

JOS was not able to issue the individual condominium certificate of title in favor of EDUPLAN as UOB had custody of the transfer certificate of title covering the condominium building.¹¹

On February 11, 2000, EDUPLAN filed a Complaint for specific performance and damages against JOS and UOB before the HLURB Arbiter.¹² The Complaint prayed for the following reliefs:

- (a) that the mortgage between JOS and UOB be declared void; (b) that [JOS and EDUPLAN] be compelled to issue and release the condominium certificate of title; and (c) that JOS be ordered to provide emergency power facilities, to refund the monthly telephone carrier charges, and to permanently cease and desist from further collecting such charges.¹³

The HLURB Arbiter issued a Decision in favor of EDUPLAN on August 15, 2001.¹⁴ The Decision declared that the mortgage between JOS and UOB, including the foreclosure proceedings, was void for violating Section 18 of Presidential Decree No. 957. Moreover, the HLURB Arbiter ruled that since EDUPLAN had already fully paid for the condominium unit, JOS and UOB should cause the release of the title to the condominium building or the “mother title” free from all liens and encumbrances in connection with Section 25 of Presidential Decree No. 957. The HLURB

⁵ Id.

⁶ Id.

⁷ Id.

⁸ Id.

⁹ Id.

¹⁰ Id.

¹¹ Id.

¹² Id. at 62.

¹³ Id.

¹⁴ Id.

Arbiter also held that JOS should provide emergency power facilities to EDUPLAN in consonance with its sales brochure. JOS should also refund monthly telephone carrier charges from September 1, 1999 to EDUPLAN, and stop the collection of such fees.

In addition, JOS should pay UOB the loan release value of EDUPLAN's unit. JOS was also held liable for damages, attorney's fees, and the costs of suit.¹⁵

Upon UOB's filing of its Petition for Review, the HLURB Board of Commissioners affirmed with modification the HLURB Arbiter's Decision.¹⁶ According to the Board of Commissioners, EDUPLAN was entitled to the delivery of the title of the fully paid unit under Section 25 of Presidential Decree No. 957.¹⁷ JOS had the legal obligation to cause the release of titles despite non-payment of its loan with UOB.¹⁸

The Board of Commissioners also ruled that JOS and UOB violated Section 18 of Presidential Decree No. 957 for not securing the Board's prior approval before the mortgage was executed.¹⁹ However, the Board of Commissioners found that there was no basis to support the refund of the payment for telephone carrier services and the order of desistance to collect such and other similar fees.²⁰

The dispositive portion of the August 20, 2004 Decision of the Board of Commissioners provides:

In the light of the foregoing premises, the decision of the Office Below is hereby modified as follows:

1. The mortgage executed by Respondent J.O.S. Managing Builders in favor of Respondent United Overseas Bank (Westmont), including the foreclosure of the mortgage, is declared as null and void for being in violation of Section 18 of Presidential Decree No. 957.
2. Respondent JOS is ordered to cause the release of the mother titles to the Aurora Milestone Tower condominium building from the mortgage held by Respondent Westmont and to issue an individual Condominium Certificate of Title to Complainant over its condominium unit, free from any and all liens and encumbrances.
3. Respondent JOS is ordered to pay the Complainant P100,000.00 by way of temperate damages; P50,000.00 by way of exemplary damages; P40,000.00 as and by way of Attorney's Fees; and the costs of suit.
4. Respondent J.O.S. is ordered to pay respondent Westmont the loan

¹⁵ Id. at 63.

¹⁶ Id. at 93.

¹⁷ Id. at 92.

¹⁸ Id.

¹⁹ Id. at 92-93.

²⁰ Id. at 93.

release value of complainant's condominium unit.

5. All other claims are hereby dismissed.

So ordered.²¹

As stated earlier, UOB filed a Petition for Review under Rule 43 of the Rules of Court before the Court of Appeals. The Court of Appeals dismissed the Petition for its belated filing and for failing to exhaust administrative remedies.²² According to the Court of Appeals, the proper recourse of UOB was to file the appeal of the Board of Commissioners' Decision before the Office of the President within 15 days from receipt of the Decision.²³

On Motion for Reconsideration, the Court of Appeals affirmed its earlier Decision.²⁴ However, it reconsidered its finding that the Petition was filed out of time.²⁵ The Court of Appeals also ruled that UOB's argument involving a purely legal question was raised for the first time in its Motion and Supplemental Motion for Reconsideration.²⁶

The present Petition was filed before this court on May 5, 2008.²⁷ This court resolved to require JOS and EDUPLAN to submit their Comment on July 16, 2008.²⁸

After receipt of JOS' and EDUPLAN's Comments dated September 11, 2008 and February 11, 2009, respectively, this court granted UOB's Motion for leave and extension of 15 days to file a consolidated Reply.²⁹

UOB's consolidated Reply was noted on June 3, 2009.³⁰

UOB raised the lone issue of whether the Court of Appeals erred in not applying the exception to the doctrine of exhaustion of administrative remedies. However, as noted by the ponencia, the more important issue at hand is whether the HLURB's nullification of the entire mortgage over the condominium project is proper.

UOB argued that the issues it raised before the Court of Appeals were

²¹ Id at 93.

²² Id. at 65.

²³ Id., *citing* Rule XXI, sec. 2 of the 2004 Rules of Procedure of the Housing and Land Use Regulatory Board. *See rollo*, pp. 70-73.

²⁴ Id. at 73.

²⁵ Id. at 69.

²⁶ Id. at 72.

²⁷ Id. at 31-57.

²⁸ Id. at 94.

²⁹ Id. at 133-A.

³⁰ Id. at 160.

purely legal, with this being a proper exception to the doctrine of exhaustion of administrative remedies.³¹ The Court of Appeals erred in dismissing the Petition for Review and calling UOB's argument on the exception to the doctrine of exhaustion of administrative remedies a "mere afterthought" since UOB raised issues on HLURB's jurisdiction and on the patent illegality of HLURB's actions.³²

According to UOB, the HLURB went overboard or went beyond its jurisdiction when it declared the entire mortgage void.³³ Citing *Far East Bank & Trust Co. v. Marquez*,³⁴ UOB claimed that the mortgage should be declared void only as to Unit E, 10th Floor, Aurora Milestone Tower, or EDUPLAN's unit, since EDUPLAN did not have any claim over other units covered by the mortgage.³⁵

Furthermore, the burden to comply with Section 18 of Presidential Decree No. 957 rests on JOS and not on UOB, thus, JOS cannot rely on the law to renege on its loan obligations.³⁶ To allow JOS to do so would "allow JOS to profit from its own misdeed."³⁷

On the other hand, EDUPLAN claimed in its Comment that UOB's argument of exception to the rule of exhaustion of administrative remedies "was a mere afterthought."³⁸ UOB had all the opportunity to invoke questions of law. However, it remained silent to its detriment.³⁹ EDUPLAN prayed that this court dismiss the Petition for lack of merit.⁴⁰

Likewise, JOS argued that UOB fatally erred when it appealed the Decision of the HLURB Board of Commissioners to the Court of Appeals instead of the Office of the President, which the rules specifically provide.⁴¹ This Petition should also be denied as UOB belatedly claimed an exception to the doctrine of exhaustion of administrative remedies.⁴² Nevertheless, there is no purely legal question involved, thus, the exception is inexistent.⁴³

At the outset, what is only questioned in this Petition is the validity of the Court of Appeals' ruling with regard to the existence of an exception to the doctrine of exhaustion of administrative remedies. However, in view of

³¹ Id. at 37–38.

³² Id. at 39–40.

³³ Id. at 43–45.

³⁴ Id. at 43–44.

³⁵ Id. at 44.

³⁶ Id. at 45–46.

³⁷ Id. at 46.

³⁸ Id. at 112.

³⁹ Id. at 113.

⁴⁰ Id. at 114.

⁴¹ Id. at 100.

⁴² Id. at 102.

⁴³ Id.

the importance of the issues involved, this court must go beyond the issues brought by the parties to this forum.

The doctrine of exhaustion of administrative remedies is already settled in this jurisdiction.⁴⁴ UOB admitted that it raised the exception to the doctrine in its Motion for Reconsideration filed before the Court of Appeals after the court had already ruled on the propriety of UOB's appeal.⁴⁵

I concur with the ponencia when it held that an exception to the doctrine of administrative remedies exists in this case, specifically that the main issue involves a legal question that only the courts may address.⁴⁶ This opinion shall focus on the legality of the nullification of the entire mortgage over the condominium project.

Presidential Decree No. 957 stands as legislation that promotes the enforcement of social justice.⁴⁷ It occupies a unique place in this jurisdiction wherein economic considerations are trumped by the need to protect unit or lot buyers with the view of ensuring improvement in the quality of life of Filipinos.⁴⁸

Section 18 of this law provides:

SECTION 18. Mortgages. - *No mortgage on any unit or lot shall be made by the owner or developer without prior written approval of the Authority.* Such approval shall not be granted unless it is shown that the proceeds of the mortgage loan shall be used for the development of the condominium or subdivision project and effective measures have been provided to ensure such utilization. The loan value of each lot or unit covered by the mortgage shall be determined and the buyer thereof, if any, shall be notified before the release of the loan. The buyer may, at his option, pay his installment for the lot or unit directly to the mortgagee who shall apply the payments to the corresponding mortgage indebtedness secured by the particular lot or unit being paid for, with a view to enabling said buyer to obtain title over the lot or unit promptly after full payment thereto;

With Section 18 of Presidential Decree No. 957 being a prohibitory law,⁴⁹ acts done contrary to its provisions are invalid.⁵⁰

⁴⁴ See *Addition Hills Mandaluyong Civic & Social Organization, Inc. v. Megaworld Properties & Holdings, Inc.*, G.R. No. 175039, April 18, 2012, 670 SCRA 83 [Per J. Leonardo-De Castro, First Division].

⁴⁵ *Rollo*, p. 39.

⁴⁶ See *Go v. Distinction Properties Development and Construction, Inc.*, G.R. No. 194024, April 25, 2012, 671 SCRA 461, 481 [Per J. Mendoza, Third Division].

⁴⁷ See *Philippine National Bank v. Office of the President*, 322 Phil. 6 (1996) [Per J. Panganiban, Third Division Resolution]. See also *Philippine Bank of Communications v. Pridisons Realty Corporation*, G.R. No. 155113, January 9, 2013, 688 SCRA 200, 214 [Per J. Brion, Second Division].

⁴⁸ See 1st whereas clause, Pres. Decree No. 957.

⁴⁹ *Metropolitan Bank and Trust Company, Inc. v. SLGT Holdings, Inc.*, 559 Phil. 914 (2007) [Per J. Garcia, First Division]. See *The Manila Banking Corporation v. Rabina*, 594 Phil. 422 (2008) [Per J.

I concur with the ponencia when it held that the lack of mortgage clearance from the HLURB in this case resulted in the nullity of the mortgage under Section 18 of Presidential Decree No. 957.⁵¹

However, I disagree with the conclusion that the HLURB erred in declaring the entire mortgage void. In refusing to declare the entire mortgage void, the ponencia cites *Far East Bank & Trust Co. v. Marquez*,⁵² which was reiterated in *Philippine National Bank v. Lim*.⁵³

It is true that *Far East Bank* ruled that the HLURB went overboard in declaring the mortgage over the entire land void. The court reasoned that respondent-buyer had “no personality standing to bring suit on the whole property, as he has actionable interest over the subject lot only.”⁵⁴ Similarly, *Philippine National Bank* had language which states that:

[W]hile it is within Lim’s right to file a complaint before the HLURB to protect her right as a condominium unit buyer, she has no standing to seek for the complete nullification of the subject mortgage. She has an actionable interest only over Unit 48C of Cluster Dominiko of Vista de Loro, no more and no less.⁵⁵

Philippine National Bank, however, involved a peculiar set of facts. It involved the application of res judicata wherein this court previously upheld the trial court’s decision that the mortgage contract over the subject properties was merely voidable and not void. Thus, the mortgage was held valid between the developer and the bank.⁵⁶

The principal obligation, i.e., the loan contract of JOS, is different from the mortgage constituted over the lots and its improvements. The loan obligation, in turn, is separate from the developer’s obligation to deliver the property to the buyers.

The divisibility of the principal obligation is, thus, distinct from the indivisibility of the mortgage.⁵⁷ The mortgage contract cannot be divided

Carpio Morales, Second Division].

⁵⁰ See CIVIL CODE, art. 5 - Acts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity. (4a)

⁵¹ Ponencia, p. 6.

⁵² 465 Phil. 276 (2004) [Per J. Panganiban, First Division].

⁵³ G.R. No. 171677, January 30, 2013, 689 SCRA 523 [Per J. Reyes, First Division].

⁵⁴ *Far East Bank & Trust Co. v. Marquez*, 465 Phil. 276 (2004) [Per J. Panganiban, First Division].

⁵⁵ *Philippine National Bank v. Lim*, G.R. No. 171677, January 30, 2013, 689 SCRA 523, 544 [Per J. Reyes, First Division].

⁵⁶ Id. at 540542.

⁵⁷ *Gonzales v. Government Service Insurance System*, 194 Phil. 465, 476 (1981) [Per J. Melencio-Herrera, First Division].

among the different lots or units.⁵⁸ To rule that the nullity of the mortgage contract under Section 18 of Presidential Decree No. 957 only applies to the property of the lot or unit owner bringing the case implies that the mortgage is divisible among the properties it covers.

Article 2089 of the Civil Code provides:

Art. 2089. A pledge or mortgage is indivisible, even though the debt may be divided among the successors in interest of the debtor or of the creditor.

In *Metropolitan Bank and Trust Company, Inc. v. SLGT Holdings, Inc.*,⁵⁹ this court definitively ruled on the issue of the nullity of the entire mortgage contract under Section 18 of Presidential Decree No. 957. Thus:

This disposition stems from the basic postulate that a mortgage contract is, by nature, indivisible. Consequent to this feature, a debtor cannot ask for the release of any portion of the mortgaged property or of one or some of the several properties mortgaged unless and until the loan thus secured has been fully paid, notwithstanding the fact that there has been partial fulfillment of the obligation. Hence, it is provided that the debtor who has paid a part of the debt cannot ask for the proportionate extinguishments of the mortgage as long as the debt is not completely satisfied.

The situation obtaining in the case at bench is within the purview of the aforesaid rule on the indivisibility of mortgage. It may be that Section 18 of PD 957 allows partial redemption of the mortgage in the sense that the buyer is entitled to pay his installment for the lot or unit directly to the mortgagee so as to enable him - the said buyer - to obtain title over the lot or unit after full payment thereof. *Such accommodation statutorily given to a unit/lot buyer does not, however, render the mortgage contract also divisible. Generally, the divisibility of the principal obligation is not affected by the indivisibility of the mortgage. The real estate mortgage voluntarily constituted by the debtor (ASB) on the lots or units is one and indivisible.* In this case, the mortgage contract executed between ASB and the petitioner banks is considered indivisible, that is, it cannot be divided among the different buildings or units of the Project. Necessarily, partial extinguishment of the mortgage cannot be allowed. *In the same token, the annulment of the mortgage is an all or nothing proposition. It cannot be divided into valid or invalid parts. The mortgage is either valid in its entirety or not valid at all.* In the present case, there is doubtless only one mortgage to speak of. Ergo, a declaration of nullity for violation of Section 18 of PD 957 should result to the mortgage being nullified wholly.⁶⁰ (Emphasis supplied)

⁵⁸ Id. See also *Aquino v. Macondray & Co., Inc., et al.*, 97 Phil. 731, 741 (1955) [Per J. Jugo, First Division].

⁵⁹ 559 Phil. 914 (2007) [Per J. Garcia, First Division].

⁶⁰ Id. at 927-928.

In *Luzon Development Bank v. Enriquez*,⁶¹ this court again nullified the entire mortgage, constituted over several parcels of land, notwithstanding the *dacion en pago* executed between the developer and petitioner bank. Among the properties included as security for the developer's loan was respondent's Lot 4. The court upheld the law's intent to protect subdivision lot or condominium unit buyers above everything else.⁶² The nullity was in accordance with Section 18 of Presidential Decree No. 957 and was unqualified as to extent of the nullity.⁶³ Citing *Metropolitan Bank and Trust Company, Inc.*:

As the HLURB Arbiter and Board of Commissioners both found, *DELTA violated Section 18 of PD 957 in mortgaging the properties in Delta Homes I (including Lot 4) to the BANK without prior clearance from the HLURB. . . .*

This violation of Section 18 renders the mortgage executed by DELTA void. We have held before that "a mortgage contract executed in breach of Section 18 of [PD 957] is null and void." Considering that "PD 957 aims to protect innocent subdivision lot and condominium unit buyers against fraudulent real estate practices," we have construed Section 18 thereof as "prohibitory and acts committed contrary to it are void."

Because of the nullity of the mortgage, neither DELTA nor the BANK could assert any right arising therefrom. The BANK's loan of P8 million to DELTA has effectively become unsecured due to the nullity of the mortgage. . . .⁶⁴ (Emphasis supplied, citations omitted)

To construe Section 18 of Presidential Decree No. 957 to mean that only those buyers or owners who brought a claim against the developer and mortgagee bank should be entitled to the nullity of the mortgage would be to undermine the purpose of the law: protection of real estate buyers.⁶⁵ The declaration of nullity of only a part of the mortgage contract furthermore encourages litigation and circumvention of the clear provisions of the law.⁶⁶

The interpretation in the ponencia will mean sanctioning partial mortgage releases. It will require all buyers of condominium projects to file their own cases to nullify a void mortgage over their property and claim release of their titles. Innocent lot or unit buyers will be left vulnerable to the whims and manipulations of the developer and/or the mortgagee.

⁶¹ 654 Phil. 315 (2011) [Per J. Del Castillo, First Division].

⁶² Id.

⁶³ Id. at 331. The specific subject matter of the case pertained to Lot 4 of the Delta Homes I project. However, the declaration of nullity of the real estate mortgage was unqualified.

⁶⁴ Id.

⁶⁵ See *Philippine National Bank v. Office of the President*, G.R. No. 104528, January 18, 1996, 252 SCRA 5, 10 [Per J. Panganiban, Third Division Resolution].

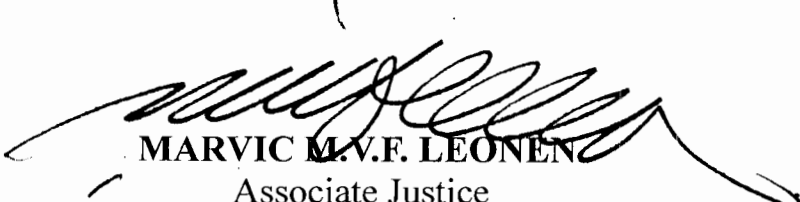
⁶⁶ See *Go v. Distinction Properties Development and Construction, Inc.*, G.R. No. 194024, April 25, 2012, 671 SCRA 461, 473 [Per J. Mendoza, Third Division], citing *Luzon Development Bank v. Enriquez*, G.R. Nos. 168646 and 168666, January 12, 2011, 639 SCRA 332, 337-338 [Per J. Del Castillo, First Division].

Another unintended consequence of the majority's decision is the weakening of HLURB's regulatory functions. Developers will take advantage of the ambiguity that the allowance of partial mortgage releases will create.

It is the court's duty to interpret the law as intended by the legislature. As stated before, "[t]he lofty aspirations of P.D. No. 957 should be read in every provision of the statute, in every contract that undermines its objects, in every transaction which threatens its fruition."⁶⁷ The law is a tool for social justice. Circumvention should not be tolerated.⁶⁸

The HLURB, therefore, acted within its powers when it nullified the entire mortgage, as well as the foreclosure proceedings.⁶⁹ Consequently, the title to EDUPLAN's Unit E, 10th Floor, Aurora Milestone Tower should be issued pursuant to Section 25 of Presidential Decree No. 957.⁷⁰

ACCORDINGLY, I vote that the Petition be **DENIED**. The Decision dated February 27, 2006 and Resolution dated March 5, 2008 of the Court of Appeals in CA-G.R. SP No. 86401, insofar as it dismissed the Petition for Review of the Housing and Land Use Regulatory Board Decision dated August 20, 2004, should be **AFFIRMED**. The mortgage constituted over the Aurora Milestone Tower by respondent J.O.S. Managing Builders, Inc. with petitioner United Overseas Bank of the Philippines, Inc. is void in its entirety.


MARVIC M.V.F. LEONEN
Associate Justice

⁶⁷ *Luzon Development Bank v. Enriquez*, G.R. No. 168646, January 12, 2011, 639 SCRA 332, 337 [Per J. Del Castillo, First Division].

⁶⁸ *See Philippine Bank of Communications v. Pridisons Realty Corporation*, G.R. No. 155113, January 9, 2013, 688 SCRA 200, 214 [Per J. Brion, Second Division], *citing Philippine National Bank v. Office of the President*, 322 Phil. 6 (1996) [Per J. Panganiban, Third Division].

⁶⁹ *See The Manila Banking Corporation v. Rabina*, 594 Phil. 422 (2008) [Per J. Carpio Morales, Second Division], *citing* Section 3 of Pres. Decree No. 957 in relation to Section 1 of Pres. Decree No. 1344: SECTION 3. National Housing Authority - The National Housing Authority shall have exclusive jurisdiction to regulate the real estate trade and business in accordance with the provisions of this Decree.

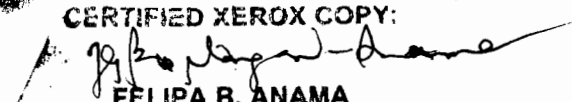
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SECTION 1. In the exercise of its functions to regulate the real estate trade and business and in addition to its powers provided for in Presidential Decree No. 957, the National Housing Authority shall have exclusive jurisdiction to hear and decide cases of the following nature:

- A. Unsound real estate business practices;
- B. Claims involving refund and any other claims filed by subdivision lot or condominium unit buyer against the project owner, developer, dealer, broker or salesman; and
- C. Cases involving specific performance of contractual and statutory obligations filed by buyers of subdivision lot or condominium unit against the owner, developer, dealer, or salesman.

⁷⁰ SECTION 25. Issuance of Title. - The owner or developer shall deliver the title of the lot or unit to the buyer upon full payment of the lot or unit.

CERTIFIED XEROX COPY:


FELIPA B. ANAMA
CLERK OF COURT, EN BANC
SUPREME COURT