



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **August 22, 2022** which reads as follows:*

“G.R. No. 247419 (Jocelyn T. Apurado v. People of the Philippines).

– This Court resolves the Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court assailing the Decision² dated August 24, 2018 and the Resolution³ dated March 27, 2019 of the Court of Appeals (CA) in CA-G.R. CR No. 02566. The assailed Decision and Resolution affirmed the Judgment⁴ dated January 30, 2015 of the Regional Trial Court, Branch 14, Cebu City (RTC) finding petitioner Jocelyn T. Apurado (*Apurado*) guilty of violation of Section 5 of Presidential Decree No. 957 (*P.D. No. 957*) and imposing upon her the penalty of fine of ₱20,000.00 and imprisonment of 10 years, with subsidiary imprisonment in case of insolvency.

An Information⁵ dated June 15, 2011 was filed against Apurado and Dativo Leyson (*Leyson*) for violation of Section 5 of P.D. No. 957,⁶ the accusatory portion of which reads:

That sometime in the month of July 2007, and for sometime prior and subsequent thereto, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, Jocelyn T. Apurado, President/Project Manager of PANIMALAY ATB REALTY SERVICES, INC., conniving and confederating together and mutually helping [the] accused Dativo Leyson, registered owner of Leysonville Subdivision lot covered under TCT Nos. 156805, 0-565 and 152609 located at Talamban, Cebu City, with deliberate intent, with intent to gain, did then and there sell and/or dispose said subdivision lots under TCT Nos. 156805, 0-565 and 152609 to Erlinda Branzuela without first securing the necessary license to sell from the Housing and Land Use Regulatory Board in Violation of Section 5 of Presidential Decree No. 957.

On arraignment, Apurado pleaded not guilty to the charge. Meanwhile, it appears that Leyson was never arraigned. The records disclose that he was

¹ *Rollo*, pp. 3-17.

² Penned by Associate Justice Dorothy P. Montejo-Gonzaga, with Associate Justices Edgardo L. Delos Santos (a retired member of this Court) and Edward B. Contreras, concurring; *id.* at 23-42.

³ *Id.* at 44-45.

⁴ Penned by Presiding Judge Raphael B. Yrastorza, Sr.; *CA rollo*, pp. 17-36.

⁵ *Id.* at 9.

⁶ Also known as *The Subdivision and Condominium Buyers' Protective Decree*.

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suffering from Alzheimer's Disease when the proceedings before the RTC began, and that he ultimately died on November 2, 2012. Thus, trial proceeded against Apurado only.⁷

For the prosecution, Erlinda Branzuela, her daughter, Louella Branzuela (*Louella*), and Godofredo Gulane, Jr. (*Gulane*), Housing and Land Use Regulatory Board (*HLURB*)⁸ representative, testified.

The prosecution sought to establish that, on September 18, 2006, the spouses Dr. Lou and Erlinda Branzuela (*Spouses Branzuela*) agreed to purchase three lots located at Block 8, Leysonville Subdivision, Talamban, Cebu City, with a total area of 162 square meters from Apurado, who was the President and Project Manager of Panimalay ATB Realty Services, Inc. (*Panimalay*). Leyson was the registered owner of the lots covered by Transfer Certificate Title (*TCT*) Nos. 156805, 0-565, and 152609, but he gave an exclusive Authority to Sell the lots to Panimalay, represented by Apurado.⁹

Subsequently, the Spouses Branzuela and Apurado, on behalf of Panimalay, entered into a Memorandum of Agreement (*MOA*) dated September 18, 2005 for the purchase of the lots. The total purchase price indicated was ₱2,100,000.00, of which ₱210,000.00 was paid by the Spouses Branzuela as earnest money. The parties agreed that the remaining balance of ₱1,890,000.00 was to be paid in 36 equal monthly installments of ₱52,000.00.¹⁰ Paragraph 9 of the *MOA* states:

9. That the FIRST PARTY will secure a License to Sell from the Housing and Land Use Regulatory Board and the Permit to Develop, on or before the eighteenth (18th) months (sic) from the signing of this agreement.¹¹

By 2007, the Spouses Branzuela have already paid a total of ₱1,224,497.50. Subsequently, they decided to buy another lot and two single-attached houses from Apurado. Another *MOA* dated July 3, 2007 was then executed between the parties for a total contract price of ₱2,490,000.00. Deducting the amount of ₱1,224,497.50 already paid by the Spouses Branzuela, the parties agreed that the total remaining balance of ₱1,138,952.25 would be paid in 33 equal monthly installments. The second *MOA* also contained a similarly worded Paragraph 9 quoted above.¹²

⁷ *Rollo*, p. 25.

⁸ Note that under Republic Act (*R.A.*) No. 11201 which took effect on March 1, 2019, the newly-constituted Department of Human Settlements and Urban Development absorbed the duties and functions of the now defunct HLURB, except for its adjudicatory function which has been transferred to Human Settlements Adjudication Commission.

⁹ *Rollo*, pp. 25-26.

¹⁰ *Id.* at 26.

¹¹ *Id.*

¹² *Id.* at 26-27.

The Spouses Branzuela continued paying until January 2009 when they received a Certification dated July 26, 2007 and an Order dated April 18, 2005 from the HLURB, enjoining them to stop payments since neither Apurado nor Leyson had a permit to sell. Thereafter, when Louella visited the lots in Leysonville Subdivision, she was surprised to see a “No Trespassing” sign erected thereon and to discover that these were already supposedly sold to another person.¹³

Gulane, the Monitoring Officer of the HLURB, identified the Certification dated July 26, 2007 and an Order dated April 18, 2005 of the HLURB to the effect that ATB Builders & Development Corporation (*ATB Builders*), the developer of Leysonville Subdivision, had no certificate of registration and license to sell. A Certificate of Registration and License to Sell both dated May 26, 2008 were issued to Leyson but not to Apurado.¹⁴

For the defense, Apurado and Cristina Lopez (*Lopez*), the Technical Liason Officer of ATB Builders, took the stand.

Apurado testified that her corporation, ATB Builders, is the developer of Leysonville Subdivision. Meanwhile, in the other company, Panimalay ATB Realty Services, Inc., she acted as the broker and agent of Leyson by virtue of an Authority to Sell executed in her favor by Leyson and his wife.¹⁵

Apurado claimed that the Spouses Branzuela entered into the MOA dated September 18, 2006 and the MOA dated July 3, 2007 knowing fully well that the license to sell was still being processed with the HLURB. She noted that the said license to sell was, in fact, issued on May 26, 2008, well within the 18-month period agreed to in Paragraph 9 of the MOA dated July 3, 2007. Apurado insisted that in any case, both MOAs in the present case are not yet considered “sales” which are covered by the prohibition under Section 5 of P.D. No. 957.¹⁶

Lopez testified that she knew Erlinda Branzuela because the latter reserved several lots from Leysonville Subdivision, but she eventually backed out from these purchases.¹⁷

On January 30, 2015, the RTC rendered its Judgment¹⁸ finding Apurado guilty of the crime charged.

¹³ *Id.* at 27.

¹⁴ *Id.*

¹⁵ *Id.* at 28.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ CA rollo, pp. 17-36.

The RTC held that under Section 5 of P.D. No. 957, the owner or dealer to whom a registration certificate was issued should not sell any subdivision lot or condominium unit without first obtaining a license to sell the project within two weeks from the registration of the project.¹⁹ Here, it found that based on the provisions of the two MOAs, the lack of license to sell at the time the sale was made was established. The RTC then ruled that under Section 39 of P.D. No. 957, any person who violates the provisions of the law shall, upon conviction, be punished by a fine of not more than ₱20,000.00 and/or imprisonment of not more than five years. In case of corporations, the person who has charge of the administration of the business shall be criminally responsible for the violation. Thus, the RTC held that Apurado, as the project manager of ATB Builders, was criminally liable for violation of Section 5 of P.D. No. 957. The RTC also found Apurado civilly liable to the Spouses Branzuela in the amount of ₱2,313,512.35 representing the payments they already made for the purchase of the lots.²⁰ The dispositive portion of the RTC Decision states:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered finding accused, JOCELYN T. APURADO[,] GUILTY beyond reasonable doubt of selling and/or disposing subdivision lots under TCT Nos. 156805, 0-565 and 152609 to Erlinda Branzuela without first securing the necessary license to sell from the Housing and Land Use Regulatory Board in Violation of Section 5 of Presidential Decree No. 957 and is hereby sentenced to pay a FINE of TWENTY THOUSAND (Php20,000.00) PESOS and to suffer imprisonment of TEN (10) YEARS with subsidiary imprisonment in case of insolvency.

Finally, accused is ordered to pay the cost of these proceedings.

SO ORDERED.²¹

Aggrieved, Apurado appealed to the CA.

In its Decision²² dated August 24, 2018, the CA denied Apurado's appeal and affirmed with modification the RTC Decision. The CA upheld the RTC's finding that the sales in the present case were consummated without a license to sell. It noted that the similarly worded paragraphs contained in both MOAs expressly acknowledged that the seller still had to secure a license to sell from the HLURB within 18 months from the signing of the agreements. According to the CA, criminal intent is immaterial for violation of P.D. No. 957, and the subsequent issuance of the license to sell for the projects did not extinguish Apurado's criminal liability.²³

¹⁹ *Id.* at 33.

²⁰ *Id.* at 35-36.

²¹ *Id.* at 36.

²² *Rollo*, pp. 23-42.

²³ *Id.* at 31.

The CA also dismissed Apurado's argument that she cannot be held liable under Section 5 of P.D. No. 957 on the ground that the provision refers to the "owner" or "dealer" of a housing or condominium project. The CA discussed that applying Articles 10²⁴ and 17(3)²⁵ of the Revised Penal Code, Apurado, as the broker of the sale transactions, can still be held criminally liable as a principal by indispensable cooperation.²⁶

The CA then affirmed the RTC's finding of Apurado's civil liability, noting that it was not included by the RTC in the dispositive portion of its ruling. The CA likewise emphasized that the imposition of an indeterminate sentence, instead of a straight penalty, may be applied in this case.²⁷ Thus, it disposed of the case, as follows:

WHEREFORE, the appeal is **DENIED**. The 30 January 2015 Judgment of the Regional Trial Court, Branch 14, Cebu City, is **AFFIRMED** but **MODIFIED** as follows:

WHEREFORE, in view of the foregoing premises, judgment is rendered finding accused **JOCELYN T. APURADO** GUILTY beyond reasonable doubt of selling and/or disposing subdivision lots under TCT Nos. 156805, 0-565 and 152609 to Erlinda Branzuela, **AS A PRINCIPAL BY INDISPENSABLE COOPERATION BEING THE EXCLUSIVE BROKER AUTHORIZED TO SELL LOTS IN LEYSONVILLE SUBDIVISION KNOWING THAT THE OWNER OF THE SUBDIVISION, DATIVO LEYSON, DID NOT FIRST SECURE** the necessary license to sell from the Housing and Land Use Regulatory Board in Violation of Section 5 of Presidential Decree 957. **JOCELYN T. APURADO** is hereby sentenced to pay a FINE of TWENTY THOUSAND (Php 20,000.00) PESOS and to suffer the **INDETERMINATE PENALTY OF IMPRISONMENT FOR A MINIMUM OF FIVE (5) YEARS TO A MAXIMUM of TEN (10) YEARS** with subsidiary imprisonment in case of insolvency.

IN ADDITION, JOCELYN T. APURADO IS ORDERED TO REIMBURSE THE P2,313,512.35 THAT ERLINDA BRANZUELA ALREADY PAID TO HER FOR THE PROPERTY AS ACTUAL DAMAGES, WHICH SHALL EARN AN INTEREST OF SIX (6) PER CENT PER ANNUM FROM THE TIME THE DECISION BECOMES FINAL AND EXECUTORY.

SO ORDERED.²⁸ (Emphases in the original)

²⁴ **Article 10.** *Offenses not subject to the provisions of this Code.* - Offenses which are or in the future may be punishable under special laws are not subject to the provisions of this Code. This Code shall be supplementary to such laws, unless the latter should specially provide the contrary.

²⁵ **Article 17.** *Principals.* - The following are considered principals:

x x x x

3. Those who cooperate in the commission of the offense by another act without which it would not have been accomplished.

²⁶ *Rollo*, p. 39.

²⁷ *Id.* at 41.

²⁸ *Id.* at 41-42.

Apurado filed a Motion for Reconsideration,²⁹ which was denied by the CA in its Resolution³⁰ dated March 27, 2019.

Hence, this petition.

The issue for this Court's resolution is whether Apurado is criminally liable for violating Section 5 of P.D. No. 957.

Apurado insists that she cannot be held liable under Section 5 of P.D. No. 957 because she is neither an "owner" nor a "dealer" as defined under the law, but a mere agent of, and developer for, Leyson. She argues that under Section 4, in relation to Section 5 of P.D. No. 957, it is the owner or the dealer of a housing or condominium project that is required to register the project and to secure a license to sell within two weeks from the registration of the project. Since only the owner and the dealer are given this exclusive responsibility, it follows that only these persons can violate the provision and be penalized under the law. She contends that a penal statute should be construed strictly against the State and in favor of the accused.³¹

The Office of the Solicitor General, on behalf of the People of the Philippines, filed its Comment³² dated November 21, 2019. It counters that Apurado is considered a "dealer" under P.D. No. 957 by virtue of the exclusive authority to sell executed by Leyson in favor of Panimalay ATB Realty Services, Inc. As the president and project manager of this company, Apurado was engaged as principal in the business of buying, selling, or exchanging real estate whether on a full-time or part-time basis.³³

The petition is denied.

In *Spouses Co Chien v. Sta. Lucia Realty & Development, Inc.*,³⁴ this Court said that P.D. No. 957, also known as the Subdivision and Condominium Buyers' Protective Decree,

x x x seeks to regulate the sale of subdivision lots and condominiums in view of the increasing number of incidents wherein "real estate subdivision owners, developers, operators, and/or sellers have reneged on their representations and obligations to provide and maintain properly" the basic requirements and amenities, as well as "reports of alarming magnitude . . . of swindling and fraudulent manipulations perpetrated by unscrupulous subdivision and condominium sellers and operators. x x x"³⁵

²⁹ CA *rollo*, pp. 234-243.

³⁰ *Rollo*, pp. 44-45.

³¹ *Id.* at 12-17.

³² *Id.* at 86-96.

³³ *Id.* at 92.

³⁴ 542 Phil. 558 (2007).

³⁵ *Id.* at 565-566. (Citation omitted)

Thus, Section 4³⁶ of the law requires the owner or real estate dealer interested in the sale of lots or units in a subdivision project or condominium project to register the project with the then National Housing Authority, now the Department of Human Settlements and Urban Development. Moreover, Section 5 of the law prohibits an owner or dealer to whom a registration certificate has been issued to sell any subdivision lot or condominium unit in the project without first securing a license to sell within two weeks from registration before it, thus:

Section 5. *License to sell.* - Such owner or dealer to whom has been issued a registration certificate shall not, however, be authorized to sell any subdivision lot or condominium unit in the registered project unless he shall have first obtained a license to sell the project within two weeks from the registration of such project.

The Authority, upon proper application therefor, shall issue to such owner or dealer of a registered project a license to sell the project if, after an examination of the registration statement filed by said owner or dealer and all the pertinent documents attached thereto, he is convinced that the owner or dealer is of good repute, that his business is financially stable, and that the proposed sale of the subdivision lots or condominium units to the public would not be fraudulent.

In *Spouses Co Chien*, this Court ruled that in the absence of specific penalties for violation of Sections 4 and 5 of P.D. No. 957, the general penalties provided under Sections 38 and 39 of the law should be applied.³⁷ In this regard, Sections 38 and 39 of P.D. No. 957 state:

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.

³⁶ Section 4. *Registration of Projects* - [The registered owner of a parcel of land who wishes to convert the same into a subdivision project shall submit his subdivision plan to the Authority which shall act upon and approve the same, upon a finding that the plan complies with the Subdivision Standards and Regulations enforceable at the time the plan is submitted.] The same procedure shall be followed in the case of a plan for a condominium project except that, in addition, said Authority shall act upon and approve the plan with respect to the building or buildings included in the condominium project in accordance with the National Building Code (R.A. No. 6541).

The subdivision plan, as so approved, shall then be submitted to the Director of Lands for approval in accordance with the procedure prescribed in Section 44 of the Land Registration Act (Act No. 496, as amended by R.A. No. 440): Provided, that in case of complex subdivision plans, court approval shall no longer be required. The condominium plan as likewise so approved, shall be submitted to the Register of Deeds of the province or city in which the property lies and the same shall be acted upon subject to the conditions and in accordance with the procedure prescribed in Section 4 of the Condominium Act (R.A. No. 4726).

The owner or the real estate dealer interested in the sale of lots or units, respectively, in such subdivision project or condominium project shall register the project with the Authority by filing therewith a sworn registration statement containing the following information: x x x (Emphasis supplied.)

³⁷ *Spouses Co Chien v. Sta. Lucia Realty & Development, Inc.*, supra note 34, at 567.

SECTION 39. *Penalties.* — Any person who shall violate any of the provisions of this Decree and/or any rule or regulation that may be issued pursuant to this Decree shall, upon conviction, be punished by a fine of not more than twenty thousand (P20,000.00) pesos and/or imprisonment of not more than ten years: Provided, That in the case of corporations, partnership, cooperatives, or associations, the President, Manager or Administrator or the person who has charge of the administration of the business shall be criminally responsible for any violation of this Decree and/or the rules and regulations promulgated pursuant thereto.

Sections 38 and 39 of P.D. No. 957 provide two distinct and separate remedies for violations of the law. A finding of guilt under one section does not preclude a finding of liability in the other for the same act/s involved. Moreover, it is the HLURB, now the Department of Human Settlements and Urban Development, that has the authority to impose administrative fines under Section 38.³⁸ On the other hand, criminal cases arising from violations of P.D. No. 957 are cognizable by the Regional Trial Courts.³⁹

In the present case, petitioner is criminally charged with violation of Section 5 of P.D. No. 957. The Information against her alleged that she conspired with Leyson and sold Leysonville Subdivision lots covered by TCT Nos. 156805, 0-565, and 152609 to Erlinda Branzuela without the requisite license to sell issued by the HLURB.

In *Cabral v. Uy, et al.*,⁴⁰ this Court held that a violation of Section 5 is *malum prohibitum* since P.D. No. 957 is a special law that is intended “to protect the welfare of the society and ensure the carrying on the purposes of civil life.” The sole question in prosecuting the crime is whether the law has been violated; malice or criminal intent is immaterial.⁴¹ In this regard, the subsequent issuance of license to sell and defense of good faith will not extinguish criminal liability under Section 5.⁴² Once it is shown that the law has been violated, the crime is consummated.

Moreover, it has been held that the prohibition in Section 5 of P.D. No. 957 extends to all types of “sale,” or any activity “that dispose or attempt to dispose of subdivision lots or condominium units.” Thus, “agreements that are

³⁸ Section 5(V)(d) of R.A. No. 11201 creating the Department of Human Settlements and Urban Development states:

SEC. 5. *Powers and Functions.* – The Department shall exercise the following powers and functions:

x x x x

V. General Powers

x x x x

(d) Determine, fix and collect reasonable amounts to be charged as fees and charges necessary for the effective implementation of all laws, rules and regulations enforced by the Department and impose reasonable fines and penalties for violation thereof: *Provided, however,* That all income generated from fees, fines, charges, and other collections shall be deposited with the National Treasury as income of the general fund; x x x.

³⁹ *Dazon v. Yap, et al.*, 624 Phil. 76, 87 (2010).

⁴⁰ 624 Phil. 402 (2010).

⁴¹ *Id.* at 407. (Citation omitted)

⁴² *Bernardo v. Tan, et al.*, 690 Phil. 640, 657 (2012), citing *Cabral v. Uy, et al.*, *supra* 40, at 407.

in the nature of a contract to sell, a contract of purchase and sale, an exchange, an attempt to sell, an option of sale or purchase, a solicitation of a sale, or an offer to sell” are covered by the prohibition.⁴³

Here, it was established that the sale of the lots was made without a license to sell duly issued by the HLURB. *First*, the terms of the MOAs are explicit that the license to sell is yet to be secured by petitioner from the HLURB within 18 months from the signing of agreement. *Second*, petitioner effectively admitted this fact when she testified that the Spouses Branzuela knew fully well that the license to sell was still being processed with the HLURB at the time the two MOAs were executed. Further, the two MOAs are covered by the prohibition in Section 5 of P.D. No. 957 as it contemplates an agreement to dispose of subdivision lots. Relevant provisions of the MOA dated July 3, 2007 provide:

1. Lot assigned to the Second Party shall preferably (be) Block No. 8, Lot No. 9, 10, 11 & 12 portion of Lot No. 20448 of the schematic subdivision plan prepared by ENGR. REMEGIO B. QUININESA with a home lot are[a] of TWO HUNDRED FO[U]RTEEN (214 sq. m.) square meters more or less, and THREE (SINGLE ATTACH) HOUSE (as constructed) AND 1 LOT ONLY with a total consideration of TWO MILLION FOUR HUNDRED NINETY THOUSAND PESOS (P2,490,000.00);
2. That the FIRST PARTY, hereby affirms and confirms the payments made by the SECOND PARTY in the amount of ONE MILLION TWO HUNDRED TWENTY-FOUR THOUSAND FOUR HUNDRED NINETY-SEVEN & 50/100 PESOS (P1,224,497.50); x x x
3. That the remaining balance in the amount of ONE MILLION ONE HUNDRED THIRTY-EIGHT THOUSAND NINE HUNDRED FIFTY-TWO & 25/100 PESOS (P1,138,952.25), including its interest, shall be paid within THIRTY-THREE (33) months in uniform payments in the amount of THIRTY-FOUR THOUSAND FIVE HUNDRED THIRTEEN & 70/100 PESOS ([P]34,513.70) PESOS (sic), effective this 30th day of July 2007 until full payment.

x x x x

10. That the FIRST PARTY will secure a License to Sell from the Housing and Land Use Regulatory Board and the Permit to Develop, or or (sic) before the eighteenth (18th) months (sic) from the signing of this agreement. x x x

x x x x

12. Issuance of the individual Deed of Sale duly signed by the lot owner will be on the last month of the full payment of the lot and/or upon release of the Letter of Guaranty from any financing agency or institution. x x x⁴⁴

⁴³ *Id.* (Citations omitted)

⁴⁴ RTC Decision, *rollo*, pp. 63-64.

Petitioner nevertheless argues that she cannot be held criminally liable for violation of Section 5 of P.D. No. 957 since that provision specifically prohibits the “owner” of, or a “dealer” in, a subdivision project or condominium project from selling any subdivision lot or condominium unit in the project without first securing a license to sell. She insists that only these persons, as defined under the law, may be held liable for a violation of Section 5 of P.D. No. 957.

This Court does not agree.

Section 2 of P.D. No. 957 defines an “owner” and a “dealer” as follows:

SECTION 2. *Definition of Terms.* - When used in this Decree, the following terms shall, unless the context otherwise indicates, have the following respective meanings:

x x x x

- i) Owner. – “Owner” shall refer to the registered parcel of the land of subject of a subdivision or a condominium project.

x x x x

- k) Dealer. – “Dealer” shall mean any person directly engaged as principal in the business of buying, selling, or exchanging real estate whether on a full-time or part-time basis.

Admittedly, petitioner does not fall under the definition of either “owner” or “dealer” under P.D. No. 957. She is not an owner, since it is not disputed that the registered owner of the lots sold to the Spouses Branzuela is Leyson. On the other hand, she is also not a dealer, considering that there is no evidence to show that she or her company is directly engaged as a principal in the business of buying, selling, or exchanging real estate. What the records establish is that her company, ATB Builders, is the developer⁴⁵ of Leysonville Subdivision.

Nevertheless, that petitioner is not an owner or a dealer does not mean that she cannot be held liable for violation of Section 5 of P.D. No. 957. To reiterate, Section 39 of P.D. No. 957 punishes “any person who shall violate any of the provisions of [the law] and/or any rule or regulation that may be issued pursuant to [it.]” Here, the provisions of the MOA show that it was executed between the Spouses Branzuela and ATB Builders as represented by petitioner. It further appears that ATB Builders entered into an agreement with

⁴⁵ Defined under Section 2 of P.D. No. 957 as:

j) Developer. – “Developer” shall mean the person who develops or improves the subdivision project or condominium project for and in behalf of the owner thereof.

Leyson wherein the former will dispose, on behalf of the latter, the lot he owns. The whereas clauses of the two MOAs state:

WHEREAS, pursuant to acquisition of land and ownership of a (sic) decent housing units for Metro Cebu residents, **the FIRST PARTY** has entered into an agreement with Lot Owner, with Lot Numbers 20448, 10373 & 1-B-A covered by TCT Nos[.] 156805, 0-565 & 152609 issued by the Register of Deeds Cebu City, situated at Talamban Proper, Cebu City, x x x.

WHEREAS, under the above-mentioned Agreement the FIRST PARTY agreed to negotiate and organize the prospective buyers of the above subject lot and to tender equivalent payment of the total lot area.⁴⁶

While ATB Builders, as developer, was only authorized by Leyson to sell the lots on his behalf, it cannot be denied that it was ATB Builders that facilitated the sale of the subject lots to the Spouses Branzuela. In other words, without ATB Builder's participation, the sale could not have been consummated. On this note, it should be emphasized that, under Section 10 of the MOA dated July 3, 2007, ATB Builders had knowledge of the lack of license to sell as it, in fact, undertook to secure it from the HLURB within 18 months from the signing of the agreement.

To clarify, Section 5 of P.D. No. 957 states the general prohibition on selling any subdivision lot or condominium unit in the project without first securing a license to sell. While it specifically prohibits the owner or dealer, it cannot mean that only these persons may be held liable for a violation of that Section, since as shown in this case, other persons may be able to facilitate or consummate the sale of subdivision lot or condominium unit in the project without the requisite license to sell.

Cantemprate v. CRS Realty Development Corporation, et al.,⁴⁷ is instructive. In that case, Cesar Casal (*Casal*) is the owner of a parcel of land known as the CRS Farm Estate, which was developed by CRS Realty Development Corporation (*CRS Realty*). By virtue of a Subdivision Development Agreement between Casal and CRS Realty, the latter undertook to sell the subdivision lots in the CRS Farm Estate. Subsequently, buyers of subdivision lots under several contracts to sell with CRS Realty filed a complaint before the HLURB against Casal and CRS Realty for their failure to deliver the certificates of title despite full payment of the said buyers. It also appeared that CRS Realty sold the lots without a duly-issued license to sell from the HLURB. When the case reached this Court, one of the issues raised was whether the lack of the license to sell rendered the sale of the subdivision lots void. We ruled in the negative and held that the failure of CRS Realty to secure the license to sell does not render the sales void because "there was

⁴⁶ RTC Decision; *rollo*, p. 62.

⁴⁷ 605 Phil. 574 (2009).

already a meeting of the minds as to the subject of the sale and price of the contract.” Nevertheless, this Court noted that while the lack of license to sell did not affect the validity of the sales, it subjects CRS Realty to civil and criminal liabilities under P.D. No. 957.⁴⁸ Thus, it was recognized that even a *developer*, who is not an owner or dealer as defined under the law, but which facilitated the sale of the subdivisions lots without a license to sell, may be held liable for violation of Section 5 of P.D. No. 957.

As correctly pointed out by the CA, to rule that only the owner or dealer may be held liable for violation of Section 5 of P.D. No. 957 would render nugatory the purpose for which the law was created, that is, for the State to closely supervise and regulate the real estate subdivision and condominium business and to prevent fraudulent schemes perpetrated by unscrupulous sellers and operators. Worse, such an interpretation would effectively open gates for the circumvention of the prohibition since subdivision owners or developers may just easily allow their developers or brokers to sell subdivision lots and condominium units on their behalf without the requisite license to sell.⁴⁹

Pursuant to Section 39 of P.D. No. 957, when committed by a corporation, as in this case, it is the president, manager, or administrator or the person who has charge of the administration of the business who shall be criminally liable for the violation of the law. Thus, the CA correctly adjudged petitioner, as the person in charge of ATB Builders, criminally liable for violation of Section 5 of P.D. No. 957. On this note, however, we differ with the CA’s view that petitioner is a principal by indispensable cooperation as defined under Article 17(3)⁵⁰ of the Revised Penal Code. On the contrary, we find that petitioner is a principal by direct participation since she directly took part in the execution of the crime when she facilitated the sale of the subdivision lots without a license to sell.

This Court also finds it proper to remove the civil liability representing the total amounts paid by the Spouses Branzuela imposed by the CA on petitioner. It is a fundamental legal principle that a person criminally liable is also civilly liable.⁵¹ Civil liability *ex delicto*, or civil liability arising from the commission of an offense, is based on the acts or omissions that constitute the criminal offense.⁵² Here, however, the right of the Spouses Branzuela to recover any amounts they paid to petitioner, if any, arises from a contract and not the crime she committed. In *Spouses Co Chien and Cantemprate*, we held that the lack of a license to sell does not affect the validity of the sale of

⁴⁸ *Id.* at 592.

⁴⁹ *Rollo*, p. 40.

⁵⁰ ARTICLE 17. Principals. — The following are considered principals:

1. Those who take a direct part in the execution of the act;
2. Those who directly force or induce others to commit it;
3. Those who cooperate in the commission of the offense by another act without which it would not have been accomplished.

⁵¹ Revised Penal Code, Art. 100.

⁵² *Lim v. Kou Co Ping*, 693 Phil. 286, 299 (2012).

subdivision lots or condominium units. The sale remains valid and subsisting and, consequently, enforceable against the parties to it.

Finally, this Court modifies the CA's imposition of penalty against petitioner. To recall, the CA disagreed with the RTC's imposition of a straight penalty of imprisonment against petitioner, holding that the Indeterminate Sentence Law (ISL) applies in the present case. The CA instead imposed upon petitioner an indeterminate sentence of imprisonment of five years, as minimum, to ten years, as maximum.

Section 1 of the ISL⁵³ provides:

SEC. 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and to a minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; *and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same.* (Emphasis supplied)

It is now settled that the ISL also applies to an offense punished by a special law where the penalty imposed was not taken from and without reference to the RPC.⁵⁴ Nevertheless, it should be clarified that based on the plain wording of the ISL, the imposition of an indeterminate sentence for the violation of a special law shall be based on the minimum and maximum terms of imprisonment provided under such law. Conversely, this means that the ISL cannot find application where the special law did not fix the minimum and maximum terms upon which the indeterminate sentence is supposedly to be based upon.

Here, Section 39 of P.D. No. 957 states that the penalty to be imposed upon any person who will violate its provisions is "*a fine of not more than twenty thousand ([P]20,000.00) pesos and/or imprisonment of not more than ten years.*" Clearly, Section 39 did not provide for both the minimum and maximum terms of imprisonment. The imposition of an indeterminate penalty under the ISL is, therefore, not applicable in the present case. Rather, Section 39 warrants the imposition of a straight penalty of imprisonment of not more than ten years upon petitioner.

⁵³ As amended by Act No. 4225 which was approved on August 8, 1935.

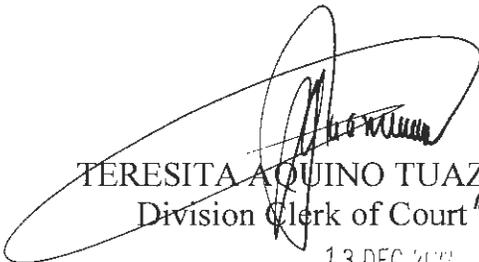
⁵⁴ *People v. Simon*, 304 Phil. 725, 751-752 (1994).

In this regard, this Court deems it proper to sentence petitioner to pay a fine of ₱15,000.00 and to serve a straight penalty of imprisonment of two years and one day, with subsidiary imprisonment in case of insolvency.

FOR THESE REASONS, the Petition for Review on *Certiorari* is **DENIED**. The Decision dated August 24, 2018 and the Resolution dated March 27, 2019 of the Court of Appeals in CA-G.R. CR No. 02566 are **AFFIRMED WITH MODIFICATION**. Petitioner Jocelyn T. Apurado is **GUILTY** of violating Section 5 of Presidential Decree No. 957, also known as the Subdivision and Condominium Buyers' Protective Decree. She is sentenced to serve a straight penalty of imprisonment of two (2) years and one (1) day, and to **PAY** a **FINE** of ₱15,000.00, with subsidiary imprisonment in case of insolvency.

SO ORDERED."

By authority of the Court:


 TERESITA AQUINO TUAZON
 Division Clerk of Court ^{12/13}
 13 DEC 2022

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 Cebu City
 (Crim. Case No. CBU-94264)

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 CA-G.R. CR No. 02566-CEB

*with copy of CA Decision dated August 24, 2018
Please notify the Court of any change in your address.
 GR247419. 08/22/2022A(213)URES

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