November 11, 2016

BIR RULING NO. 385-16

Section 32, RA No. 7279; BIR Ruling No. 053-15

Divine Favor Homeowners Association, Inc.
Livelihood St., Area C, Talanay, Brgy. Batasan Hills, Quezon City

Attention: *AAA*

Gentlemen :

This refers to the letter of Eduardo P. Giolagon, Officer-in-Charge of Housing, Community Development and Resettlement Department of Quezon City dated November 4, 2015, requesting the sale transaction between BBB and Divine Favor Homeowners Association, Inc. for exemption from the payment of Capital Gains Tax and other taxes in accordance with the Republic Act (RA) No. 7279, otherwise known as the "Urban Development and Housing Act of 1992."

Documents submitted disclose that BBB (married to CCC) is the registered owner of a parcel of land, identified as Lot 3, Block 22 of the consolidation and subdivision plan Pcs-2874, being a portion of the consolidation of Lots 31-A & 31-B, described on plan Psd-25516, Lots 38-A and 38-B, described on plan Psd-30040, Lot 32, described on the Original Plan Psu-32606 and Lot 24-B described on Plan Psd-10639, L.R.C. (GLRO) Rec. No. 1037 covered by Transfer Certificate of Title (TCT) No. 004-RT2010002456 (223773) issued by the Registry of Deeds for Quezon City. The aforesaid property is situated at Brgy. Batasan Hills, Quezon City with an area of Two Thousand Five Hundred Forty square meters (2,540 sq.m.), more or less. Divine Favor Homeowners Association, Inc. (TIN 000-000-000-000), on the other hand, is a homeowner's organization duly registered with the Housing and Land Use Regulatory Board (HLURB). On June 11, 2015, the parties executed a Deed of Absolute Sale whereby BBB represented by her Attorney-in-Fact, DDD, transferred and conveyed the subject property to Divine Favor Homeowners Association, Inc. at an agreed price of _____ Pesos (P_____). Pursuant to the certification issued by SHFC, the subject property covered by TCT No. 004-RT2010002456 (223773) actually comprises a Community Mortgage Program (CMP)

Copyright 2020 CD Technologies Asia, Inc.

Project and shall be proportionately distributed to the association's qualified member-beneficiaries. [1] For this purpose, Divine Favor Homeowners Association, Inc. secured a housing loan under the CMP, a financing assistance program of the SHFC a subsidiary of the National Home Mortgage Finance Corporation (NHMFC). Documentary Stamp Tax (DST) due on the sale has been paid.

In support of its request, Divine Favor Homeowners Association, Inc. has completely submitted on March 11, 2016 the following documents:

1) SHFC letter application for tax exemption;

2) Certification of the President of the SHFC, that the subject property qualifies and is actually a CMP project;

3) SHFC Letter of Guaranty No. 0868;

4) Certified true copy of the Deed of Absolute Sale to the Community Association;

5) Certified true copy of the Articles of Incorporation of the Community Association;

6) Certified true copy of the Masterlist of Qualified Beneficiaries duly certified by the SHFC;

7) Certified true copies of the TCT and Latest Tax Declaration of the Property Sold to the Community Association;

8) Certified true copy of the Location Plan of the Lot Sold to the Community Association;

9) TIN ID/BIR Certificate of Registration of the seller and the Homeowner Association; and

10) *Other pertinent documents.*

In reply, please be informed that pursuant to Section 32 of RA No. 7279, pertinent portions of which state that:

> *"Sec. 32. Incentives. — To encourage its wider implementation, participants in the CMP shall be granted with the following privileges or incentives:*
>
> xxx xxx xxx

Copyright 2020 CD Technologies Asia, Inc.

(b) Properties sold under the CMP shall be exempted from the capital gains tax; and"

the landowner who sold her property under the CMP are exempt from the payment of capital gains tax.

Such being the case, the sale by BBB (married to CCC), through her Attorney-in-Fact, DDD to Divine Favor Homeowners Association, Inc. of the subject property covered by TCT No. 004-RT2010002456 (223773) is exempt from the capital gains tax.

Upon issuance of this letter of exemption, and upon registration of the document of sale, a lien on the Certificate of Title of the land to be issued in the name of the Homeowner's Association shall be annotated by the Register of Deeds having jurisdiction over the property, to the effect that the said property shall be used for socialized housing pursuant to RA No. 7279. (BIR Ruling No. 053-15 dated February 27, 2015)

However, the documentary stamp tax is not one of the taxes covered by the tax exemption clause in Sec. 32 of RA 7279. Accordingly, the landowner is liable to pay the documentary stamp tax on the document conveying the afore-stated property imposed under Section 196 of the Tax Code of 1997, based on the consideration contracted to be paid for such realty or its fair market value determined in accordance with Section 6 (E) of the said Code, whichever is higher.

It is, however, understood that this ruling is never intended and shall not be construed as giving authority to the concerned Register of Deeds to effect transfer of the land title in the name of the buyer without the necessary certificate of authority to register issued by this Bureau. In this regard, this ruling shall be presented to the Revenue District Office (RDO) concerned in order for the latter to issue the Certificate Authorizing Registration (CAR). The CAR shall only be issued after the submission of the requirements provided under RMO No. 15-2003. (BIR Ruling No. 053-15 dated February 27, 2015)

Notwithstanding the foregoing, the Bureau of Internal Revenue shall conduct verification and post-audit that the actual occupants of the property transferred under the CMP are qualified beneficiaries and therefore, the sellers are entitled to exemption from capital gains tax or income tax imposed under the Tax Code of 1997.

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be ascertained that the facts are different, then this ruling shall be considered as null and void.

Very truly yours,

Copyright 2020 CD Technologies Asia, Inc.

(SGD.) CAESAR R. DULAY
Commissioner of Internal Revenue

Footnotes

1. See Annex for the masterlist of qualified beneficiaries consisting of two (2) pages.

Copyright 2020 CD Technologies Asia, Inc.