Republic of the Philippines
Department of Finance
Securities and Exchange Commission
SEC Building, EDSA, Greenhills, Mandaluyong City
Office of the General Counsel

26 August 2011

SEC-OGC Opinion No. 11-36
Condominium Corporation

MR. MELECIO ARRANZ, JR.
Unit 208B, Valencia Hills Condominium,
Valencia corner N. Domingo Streets,
Quezon City

Sir:

This refers to your letter dated 05 August 2010 requesting the Commission to render an opinion on the matter of membership in the Valencia Hills Condominium Corporation *("VHCC").*[1]

In your letter, you alleged that in 1999, Mr. Philip See *("Mr. See")* purchased a unit in Valencia Hills Condominium from Topsphere Realty Development. Co., Inc. *("TOPSPHERE"),* but to date, the unit remains in the name of Topsphere. You also claim that the agreement between Topsphere and Mr. See was that taxes on the property shall be Mr. See's responsibility, but until now, Mr. See has not presented the sale to the Bureau of Internal Revenue and to the Register of Deeds to get his title.

Your letter also states that on 01 August 2010, in the general membership meeting of VHCC, Mr. See was voted as one of the members of the Board. Section 1 of Article I of the By-Laws of VHCC provides: "Membership in the condominium corporation "shall be limited exclusively to **full owners** of condominium units in the Valencia Hills xxx".

Thus, your query is whether or not Mr. See may be considered as a "full owner", that will determine his right to be a member of the VHCC and to be qualified as a member of the board of directors.

At this juncture, may we suggest that you inquire from the VHCC what the corporation means by the term "full owners", as provided by the By-Laws, and whether Mr. See is, indeed, qualified to be a member of its board. To answer your question would require a determination of ownership of the condominium unit in question. Due to this, we cannot give a definitive opinion on the matter because as a matter of policy, the Commission refrains from rendering opinion where the resolution of the queries would necessitate the determination of factual issues.[2] Nor

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[1] Opinion fee was paid on 21 June 2011.
[2] SEC Memorandum Circular No. 15, Series of 2003, par. 5.8.

does the Commission render opinion on matters which would necessarily require a review and interpretation of contracts, since this is justiciable in nature and contract review calls for legal examination of contract on a general basis and not on specific legal issues.[3]

However, for your guidance, we would like to inform you that in legal terms, full ownership, or *dominium plenum*,[4] refers to "the union of the *dominium directum* with the *dominium utile*."[5] This means that full ownership occurs when the legal title over the property and the equitable or beneficial ownership thereto is merged in the same person.

To clarify, legal title is usually indicated by whose name is written in the certificate of title over the property. On the other hand, "beneficial use, ownership or interest in property means 'such a right to its enjoyment as exists where the legal title is in one person and the right to such beneficial use or interest is in another . . ."[6]

Further, the term "full ownership" may also be considered in the light of the distinction between a contract of sale and a contract to sell.

In the case of *Tomas K. Chua vs. Court of Appeals and Encarnacion Valdes-Choy*[7], the Supreme Court has expounded on this:

> "The obligation of the seller is to transfer to the buyer ***ownership*** of the thing sold. In the sale of real property, the seller is not obligated to transfer in the name of the buyer a new certificate of title, but rather to transfer ownership of the real property. There is a difference between transfer of the certificate of title in the name of the buyer, and transfer of ownership to the buyer. **The buyer may become the owner of the real property even if the certificate of title is still registered in the name of the seller. As between the seller and buyer, ownership is transferred not by the issuance of a new certificate of title in the name of the buyer but by the execution of the instrument of sale in a public document.**
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> xxx
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> **When the deed of absolute sale is signed by the parties and notarized, then delivery of the real property is deemed made by the seller to the buyer.** Article 1498 of the Civil Code provides that —
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> > Art. 1498. When the sale is made through a public instrument, the execution thereof shall be equivalent to the

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[3] *Id.*, par. 5.3.
[4] See *Teodorico Alejandro, et al. vs. Ambrosio M. Geraldez*, G.R. No. L-33849, 18 August 1977.
[5] Black's Law Dictionary, 5th ed. (1979), p. 437.
[6] Montana Catholic Missions v. Missoula County, 26 S Ct. 197, 200, 200 U.S. 118, 127–128, January 2, 1906, per Peckham, J., as stated in footnote 61 of *La Bugal-B'laan Tribal Assn., Inc., et al. vs. Victor O. Ramos, et al.*, G.R. No. 127882, 01 December 2004.
[7] G.R. No. 119255, 09 April 2003.

delivery of the thing which is the object of the contract, if from the deed the contrary does not appear or cannot clearly be inferred.

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Similarly, in a **contract to sell real property**, once the seller is ready, able and willing to sign the deed of absolute sale before a notary public, the seller is in a position to transfer ownership of the real property to the buyer. At this point, the seller complies with his undertaking to sell the real property in accordance with the contract to sell, and to assume all the obligations of a vendor under a contract of sale pursuant to the relevant articles of the Civil Code. In a contract to sell, the seller is not obligated to transfer ownership to the buyer. Neither is the seller obligated to cause the issuance of a new certificate of title in the name of the buyer. However, the seller must put all his papers in proper order to the point that he is in a position to transfer ownership of the real property to the buyer upon the signing of the contract of sale." (Emphasis supplied.)

The difference between a contract of sale and a contract to sell is explained in *Salazar vs. Court of Appeals*[8], wherein the Supreme Court ruled that:

"In a ***contract of sale***, the title to the property passes to the vendee upon the delivery of the thing sold; ***in a contract to sell***, ownership is, by agreement, reserved in the vendor and is not to pass to the vendee until full payment of the purchase price. Otherwise stated, in a ***contract of sale***, the vendor loses ownership over the property and cannot recover it until and unless the contract is resolved or rescinded; whereas in a ***contract to sell***, title is retained by the vendor until full payment of the price. In the latter contract, payment of the price is a positive suspensive condition, failure of which is not a breach but an event that prevents the obligation of the vendor to convey title from becoming effective."

Considering the foregoing, it means that in order to settle the question of full ownership by Mr. See of a condominium unit in VHCC, a determination of factual issues and a review and interpretation of contracts are required, which are outside the jurisdiction and functions of the Commission.

Based on your allegations that Mr. See purchased the condominium unit from Topsphere, and the attached Certificate of Purchase and Delivery/Turnover, it might be helpful for you know that Art. 433 of the Civil Code[9] provides:

"Art. 433. Actual possession under claim of ownership raises disputable presumption of ownership. xxx"

In addition, Art. 1458 of the Civil Code provides:

[8] G.R. No. 118203, 05 July 1996.
[9] Republic Act No. 386 (1949).

"Art. 1458. By the contract of sale one of the contracting parties obligates himself to transfer the ownership and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent.

A contract of sale may be absolute or conditional."

Article 1495 of the Civil Code states the obligation of the vendor in a contract of sale, thus:

"Art. 1495. The vendor is bound to transfer the ownership of and deliver, as well as warrant the thing which is the object of the sale."

Thus, a perusal of the contract between Mr. See and Topsphere, especially as to whether the contract is a contract of sale or a contract to sell, might give you more information. However, the Commission is not in the position to interpret such contract.

It shall be understood that the foregoing opinion is rendered based solely on the facts disclosed in the query and relevant solely to the particular issues raised therein and shall not be used in the nature of a standing rule binding upon the Commission in other cases of similar or dissimilar circumstances. If upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.

Please be guided accordingly.

VESPER JULIUS B. GARCIA
Officer-in-Charge