Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

19 March 2018

SEC-OGC Opinion No. 18-05
Re: Membership in a Condominium Corporation

SALVADOR LLANILLO & BERNARDO
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Makati

Attention: Mary Rose V. Pascual, Maricon Z. Maralit-Soriano, Iris Katrine M. Exchaure

Dear Mesdames,

This refers to your letter dated 28 November 2017 requesting the Commission to render an opinion on the matter of The Grand Towers Manila Condominium Association Inc., (CondoCorp). Specifically, you posited two issues:

1. Whether or not purchasers of private units who have not fully paid the purchase price may be considered members of the CondoCorp; and
2. Whether or not purchasers of private units who have not fully paid the purchase price may be assessed condominium dues.

In your letter, you disclosed that there appears to be a difference in the definition of "members" in the CondoCorp's By-Laws and Master Deed. In the By-Laws, the membership in the corporation is limited exclusively to "the registered owners of the private units in the condominium, who under the provisions of the Master Deed, automatically become members of the corporation." The Master Deed, on the other hand, defines the members of the CondoCorp as follows, to wit:

> "Section 9. Membership and Voting Rights in the Condominium Corporation.

> Membership in the Condominium shall be exclusive to the owners and/or purchasers of the Units, the same being a mere appurtenance of ownership. xxx" (Underscoring supplied).

You also mentioned that the inconsistency between the foregoing provisions become more apparent in cases where persons and entities purchased private units from the developer on installment basis. It has been the practice of the CondoCorp to assess these purchasers the condominium dues after the private units have been turned over. **Such assessment is regardless of the fact that the title to the private units remains with the developer until the full purchase price of the private units have been paid.**

Settled is the rule that in case of inconsistency in the provisions of the By-Laws and Master Deed, the provision of the latter shall prevail. This is according to SEC-OGC Opinion No. 12-18[1], which referred to Section 10 of Republic Act No. 4726 or the Condominium Act[2], to wit:

> "Section 10. Whenever the common areas in a condominium project are held by a condominium corporation, such corporation shall constitute the management body of the project. The corporate purpose of such a corporation shall be limited to the holding of the common areas; either in ownership or any other interest in real property recognized by law, to the management of the project, and to such other purposes as may be necessary, incidental or convenient to the accomplishment of said purposes. The articles of incorporation or by-laws of the corporation shall not contain any provision contrary to or inconsistent with the provisions of this Act, the enabling master deed, or the declaration or restrictions of the project. **Membership in a condominium corporation regardless of whether it is a stock or non-stock corporation shall not be transferable separately from the condominium unit of which it is an appurtenance.** When a member of a stockholder cease to own a unit in the project in which the condominium corporation owns or holds the common areas, he shall automatically cease to be a member or stockholder of the condominium corporation." (Emphasis and underscoring supplied).

Thus, the definition of a member in the Master Deed shall prevail. The issue now is what is meant by the word "purchaser" in the Master Deed.

As to your first query, in order to determine who shall be a member of the condominium corporation, it is critical to determine who is the owner of the unit.

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[1] SEC-OGC Opinion No. 12-18, dated 18 September 2012, addressed to Velasco Law Office c/o Atty. Brenda Angeline K. Velasco-Ho.

[2] An Act To Define Condominium, Establish Requirements for its Creation, and Govern its Incidents, Republic Act No. 4726.

In the case of ***Sunset View Condominium Corporation v. The Hon. Jose C. Campos, Jr. and Aguilar Bernares Realty***,[3] the Supreme Court held that only the owner of a unit is a stockholder of the Condominium Corporation, as inferred from Section 10 of the Condominium Act; thus, ownership of a unit is a condition *sine qua non* to being a shareholder in the corporation.

In the said case, the Court, in order to determine when and under what conditions ownership of a unit is acquired by a purchaser, analyzed the provisions of the Master Deed and the words of the instrument conveying the unit. The Master Deed provides that the "purchaser of a unit shall acquire title or ownership of such Unit, subject to the terms and conditions of the instrument conveying the unit to such purchaser." Examining further, the Court discovered that the instrument conveying the unit is a Contract to Buy and Sell which provides that the seller will convey unto the buyer full and absolute title to the unit upon full payment of the total purchase price and full compliance of any other obligation. Based on the foregoing, the Court then held that those who have not fully paid the purchase price of the units are not owners of their units, and consequently, are not members of the corporation, to wit:

> "Pursuant to the above statutory provision [Section 10], ownership of a unit is a condition *sine qua non* to being a shareholder in the condominium corporation. It follows that a purchaser of a unit who is not yet the owner thereof for not having fully paid the full purchase price, is not a shareholder by necessary implication, the "separate interest" in a condominium, which entitles the holder to become automatically a share holder in the condominium corporation, as provided in Section 2 of the Condominium Act, can be no other than ownership of a unit. This is so because nobody can be a shareholder unless he is the owner of a unit and when he ceases to be the owner, he also ceases automatically to be a shareholder.
>
> The private respondents, therefore, who have not fully paid the purchase price of their units are consequently not owners of their units are not members or shareholders of the petitioner condominium corporation." [4]

Based on your statement that it is a "fact **that the title to the private units remains with the developer until the full purchase price of the private units have been paid,**" it appears that the instruments related to the inquiry are contracts to sell; hence, applying the above-said Supreme Court decision, the purchasers who have not yet fully paid is not yet deemed as the owners, and thus, not members of the CondoCorp.

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[3] *Sunset View Condominium Corporation vs. Hon. Jose C. Campos and Aguilar-Bernares Realty*, G.R. No. L-52361, 27 April 1981.
[4] *Ibid.*,

As to the query on who will be principally liable for the payment of association dues in the CondoCorp., the Master Deed left it to the Board to determine the levying of assessment including association dues. In this respect, we refrain from issuing an opinion on this matter as the determination of who shall be assessed association dues is already within the business judgment of officers of the CondoCorp.

Please note that the foregoing opinion is rendered based solely on the facts and circumstances disclosed and relevant solely to the particular issue raised therein.[5] If, upon further inquiry or investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.

Please be guided accordingly.

Very truly yours,

CAMILO S. CORREA
General Counsel

[5] SEC Memorandum Circular 2003-15, No.7