

**BEFORE THE HON'BLE ADJUDICATING OFFICER,
TNRERA, CHENNAI**

**I.A. No. 03 / 2019
In
C.C.P. No. 138 of 2018**

Dated the 22nd day of July, 2019

M/s. Dharani Developers,
Rep. by Director C.Konguvel

...Applicant/Respondent

-Vs-

S.Annamalai

...Respondent/Complainant

The above petition filed by the Applicant/Respondent in the main complaint seeking to cross-examine the Respondent / Complainant who was examined as CW-1 before this Forum, came up for hearing on 12-07-2019 and after hearing both sides and having perused the documents, this Forum after due consideration of the materials passed the following :-

ORDER

2. The case of the Petitioner in brief as follows:-

(a) The Petitioner is the Respondent/Promoter in the main complaint. The affidavit of the director of the Petitioner Company is filed in support of this petition. The Petition to cross-examine the Respondent is filed since several facts relating to the progress of the construction and payments made towards the installments have been suppressed by the Respondent. The Petitioner agreed to deliver possession of the apartment by August 2017, but the same was subject to conditions in the Construction Agreement such as payment of the installments at each phase without default before the due date as stipulated in Clause 2 and other conditions. The Respondent had defaulted in the payments resulting in the delay. At the time of booking of the apartment by the Respondent, almost 70% of the work mentioned in Clause 2 of the Agreement had been completed and he ought to have paid 70% of the total consideration but he has not paid so. Despite the breach of Construction Agreement by the Respondent, the

petitioner company with intention to deliver the apartment at the earliest continued with the construction of the project investing its own funds.

(b) It is pertinent to note that the Respondent, even after lapse of two years, has failed to pay the remaining consideration which is obligatory on his part. The Respondent had defaulted Rs.11,64,065/- which is payable upon the completion of brick work phase as per the payment schedule. In his proof affidavit, the Respondent has only partially stated the facts. The Respondent's blunt allegation against the Petitioner Company is not only without any basis but contrary to the truth and the same can only be revealed by cross-examining the Respondent. Hence this petition.

3. Counter Averments of the Respondent in brief is as follows:-

(a) The Respondent approached the Petitioner for the purchase of the flat promoted by them. The Petitioner arranged for a home loan for the Respondent with the State Bank of India, Chennai RACPC Branch for a home loan of Rs.75,00,000/-. The Bank released Rs.50,00,000/- based on the report and opinion of the Surveyor of SBI that only 67% of the construction work was completed as on 29-03-2017. This Respondent paid Rs.17,00,000/- together with Rs.50,00,000/- disbursed by the SBI. During the visit of Respondent between 24-03-2017 to 30-03-2017, he found the brick work was not completed fully and plastering works were not initiated.

(b) It is false to say that the construction delay was due to the delay of any payment by the Respondent. The delay of construction was due to commercial issues between the Petitioner and the Contractor and there was stoppage of works for many months. The Respondent received mail on 27-09-2017 stating that the construction work will resume from 10-10-2017. The Petitioner did not demand in writing for any payment. Even the Respondent was ready to pay the full amount if the Petitioner was making construction as per the schedule. Hence the Respondent prays to allow his case.

4. On consideration of rival contentions of both sides, the following point arises for consideration:-

i) whether the petition for cross-examination of CW1 by the Petitioner is to be allowed?

5. Answer for Point No. (i):

a) The Learned Counsel for the Petitioner/Promoter contended that it is necessary to cross-examine the Respondent / Complainant who was examined as CW-1 by the Petitioner, since several facts relating to the progress of construction and payment towards the installments have been suppressed by the Respondent and the Respondent defaulted in payment of the amount due and the Petitioner had invested its own funds to complete the construction and therefore to bring out the facts fully, it is necessary that the petition is to be allowed.

b) However the Respondent/Complainant submitted that the Petitioner arranged for a home loan from SBI for the Respondent and he also had his own funds and as a NRI, he was also earning good money till December 2017, he was ready to pay the full amount if the Petitioner was making progress of construction as per the schedule and the Surveyor of the Bank inspected the construction and he estimated the work of construction and the Respondent is not a technically qualified to evaluate the progress of the construction work.

c) The Rule 38(2) of the TNRERA Rules prescribes summary procedure for enquiry before this Forum. In case of summary procedure, this Forum is not required to follow the regular formal procedure, but is authorized to follow a short and quick procedure for expeditious disposal of cases under the RERA Act for speedy dispute redressal in conformity with the object of the Act. Therefore cross-examination of a witness or a party before this Forum under the Act is not a rule. It is only an exception. When it is merely a question as to veracity of the statement of the witness, cross-examination cannot be permitted. In that case to contradict, a party can certainly file his own affidavit or of any other witness. If cross examination of a person is to be permitted in every case under the RERA Act, the whole object of the Act would be lost and there would hardly be any difference in proceedings before this Forum under this Act and a Civil Court. Therefore, considering the circumstances of the case, the question of allowing cross-examination has to be decided.

d) So far as this case is concerned, the Petitioner seeks cross-examination of the Respondent on the ground that several facts relating to progress of constructions and payments made towards the installments have

been suppressed by the Respondent. After the Respondent produced his evidence by Proof Affidavit and marked documents, the case has been posted for the evidence on the side of the Petitioner. It is obvious that the intention of the Petitioner to cross-examine the Respondent is to contradict him on the point of progress of construction and the payments made by him. It is always open for the Petitioner to produce the evidence on the point to disprove the evidence of the Respondent. Therefore it is held that the circumstances do not warrant cross-examination of the Respondent and the Petitioner himself is at liberty to produce his own evidence on the point of dispute and the petition is liable to be dismissed. Thus the point is answered accordingly.

In the result, the petition is dismissed.

Sd/-xxx

G.SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI

CERTIFIED TO BE TRUE COPY

N. Narasimhan
23/7/19
ADMINISTRATIVE OFFICER
TN REAL ESTATE REGULATORY AUTHORITY

22/7/2019