

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

**I.A. No. 53 / 2019
In
C.C.P. No. 113 of 2019**

Dated the **6th** day of **November, 2019**

M/s. North Town Estates
Private Limited

... Petitioner/Respondent No.2

-Vs-

Julian Abraham & Another
M/s. PVP Ventures Ltd

... 1st & 2nd Respondents/Complainants
... 3rd Respondent/Respondent No.1

The above petition filed by the Petitioner/Respondent No.2 in the main complaint seeking permission to cross-examine the Respondents/Complainants who was examined as CW-1 before this Forum, came up for hearing on 23-10-2019 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 2nd Respondent/Promoter in the main case. The affidavit of the director of the Petitioner Company is filed in support of this petition. The Petitioner filed counter in the complaint stating that the respondents / complainants suppressed and misrepresented material facts and also denied all the averments of the respondents.

(b) The Petitioner placed the true and correct facts before the Forum in their counter. The Complainants have defaulted in payment and failed to perform as per the terms and conditions of the agreement, since the Complainants swapped the apartment from one to another on condition of payment of additional sale consideration. The Complainants booked the apartment only for investment purpose and to gain profit.

(c) The Complainants filed proof affidavit on 14.08.2019. After filing of counter by the Petitioner, the Complainants also filed statement of accounts as additional documents. The Petitioner disputed the status of the Complainants as allottee. The facts can be established only on cross-examination of the Complainants. Hence the petition.

3. The Respondents have not filed any counter.

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

i) Whether the petition for cross-examination of CW1 by the Petitioner/Respondent 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 payment schedule and the swapping of apartments from one to another and the flat being made ready by the Petitioner and the Complainants have not approached the Forum with clean hands and also to prove the conduct of the party under section 71(3) of the RERA Act.

b) 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.

c) So far as this case is concerned, the Petitioner seeks cross-examination the Complainants on the ground that the Complainants filed the proof affidavit with documents and they suppressed facts of payment due as per payment schedule and swapping of apartment from one to another and the purchase of flat by the Complainants for investment purpose.

d) The Petitioner/Respondents filed this petition after the complainants filed proof affidavit and marked documents evidence on their side. It is obvious that the intention of the Petitioner to cross- examination on the Complainants is to contradict them on the points mentioned above. It is always open for the Petitioner to produce their evidence on the point to disprove or contradict the evidence of the Respondent. Therefore it is held that the circumstances of the case do not warrant cross-examination of the

Respondent and the Petitioner himself is at liberty to produce their 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/-6.11.2019
G.SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI

CERTIFIED TO BE TRUE COPY

N. Anand
6/11/19
ADMINISTRATIVE OFFICER
TN REAL ESTATE REGULATORY AUTHORITY