

**BEFORE THE HON'BLE ADJUDICATING OFFICER,
TNRERA, CHENNAI
I.A. No. 93 / 2019
In
C.C.P. No. 107 of 2019
Dated the 11th day of December, 2019**

M/s. Sathyam Homes Pvt. Ltd.

... Petitioner/Respondent

-Vs-

M. Gopalakrishnan

... Respondent/Complainant

The above petition filed by the petitioner/respondent in the main complaint seeking permission to cross-examine the respondent/complainant who was examined as CW-1 before this Forum, came up for hearing on 11-12-2019 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 case. The affidavit of the managing director of the petitioner company is filed in support of the petition. The respondent/complainant suppressed material facts and misled this Forum for unlawful gain. He raised many issues in his proof affidavit that are not at all raised in his complaint and is contradicting his own statements made in the complaint and the proof affidavit and hence the oral evidence of both the parties is necessary. There are several triable issues.

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(b) The respondent has not approached this Forum with clean hands and oral evidence is important to dispose the matter in accordance with law. If the petition is not allowed, the respondent would be put to irreparable loss and much hardship. No prejudice would be caused to the respondent. Hence, the petitioner prays permission to cross examine the respondent.

3. Counter averments of the respondent in brief as follows:-

The petition is not maintainable in law or on facts and is liable to be dismissed. The procedure under RERA Act and Rules is summary in nature. There is no provision for oral evidence. As per section 38 of the RERA Rules, if the Adjudicating officer is satisfied on the statements of the parties to the proceedings, he has power to decide the complaint in accordance with law. Hence, the respondent prays for the dismissal of the petition.

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

Whether the petition for cross-examination of CW1 by the Petitioner/Respondent is to be allowed?

5. Answer for Point:

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, since he raised several issues in the proof affidavit that are not at all raised in his complaint and he is contradicting the own statement made in the complaint and the proof affidavit and he has not approached this Forum with clean hands and under section 71(3) of the RERA Act and Rule 37(2)(e) and (g) and also Rule 38(2)(c) and (d) of the TNRERA Rules give powers to the Forum for the cross examination of the witnesses and therefore the petition is to be allowed.

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(b) However, on the side of the respondent, it is contended that the petition is liable to be dismissed as not maintainable and RERA Act and Rules provide for disposal of cases in summary procedure and there is no provision for oral evidence and therefore the petition is liable to be dismissed.

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.

d) 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.

e) So far as this case is concerned, the Petitioner seeks cross- examination of the Complainant on the ground that the respondent raised several issues in the proof affidavit that were not raised in his complaint and is contradicting his own statements for unlawful gain. It is settled law that evidence without pleading is not sustainable. Petitioner is at liberty to take advantage of any such contradiction.

f) It is always open for the petitioner to produce his 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

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Respondent and the Petition lacks merits and is liable to be dismissed. Thus the point is answered accordingly.

In the result, the petition is dismissed.

Sd/-11.12.2019
G.SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI

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M. Pragasam
11/12/19
Administrative Officer