

REAL ESTATE REGULATORY AUTHORITY**Complaint no. HPRERA2024008/C****IN THE MATTERS OF :-**

1. Sh. Umesh Walia son of Late Sh. Mohinder Kumar Walia,
Resident of First Floor 77 Lower Bazar Shimla

.....Complainant

Versus

- Sh. Balbir Singh Verma son of Late Sh. Dharam Dass Verma,
resident of House no.4B, Lane 7, Sector 1 New Shimla, Shimla
171009

..... Respondent**Complaint no. HPRERA2024009/C**

2. Sh. Vaibhav Gupta son of Late Sh. Ved Raj Gupta, resident of C3
Second Floor Buttermere Estate, Summer Hill, Shimla, Himachal
Pradesh,171005

.....Complainant

Versus

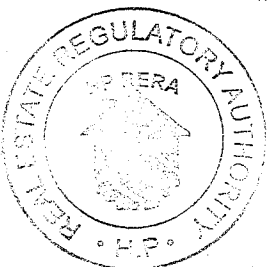
- Sh. Balbir Singh Verma son of Late Sh. Dharam Dass Verma,
resident of House no.4B, Lane 7, Sector 1 New Shimla, Shimla
171009

.....Respondent**Complaint no. HPRERA2024010/C**

3. Sh. Sanjay Kumar son of Late Sh. Faqir Chand Sood, resident of
Faqir Chand Sood Boot House Sood Building, Totu, Shimla,
Himachal Pradesh,171011

.....Complainant

Versus



Sh. Balbir Singh Verma son of Late Sh. Dharam Dass Verma,
resident of House no.4B, Lane 7, Sector 1 New Shimla, Shimla
171009

.....Respondent

Complaint no. HPRERA2024011/C

4. Sh. Suresh Kainthla son of Late Sh. Prem Sukh Kainthla,
resident of Verma Apartment, Block-C, Dyerton Estate Flat No.5
Below Talland Shimla, Shimla, Himachal Pradesh, 171001

.....Complainant

Versus

Sh. Balbir Singh Verma son of Late Sh. Dharam Dass Verma,
resident of House no.4B, Lane 7, Sector 1 New Shimla, verma
construction company ,Vishal Mega Mart Building , Top Floor ,
Near DD Mehta Petrol Pump Sanjauli, Shimla, Himachal
Pradesh, 171009

.....Respondent

Present:- Sh. Dibender Ghosh & Ashwani Negi Ld. Counsels along
with Sh. Umesh Walia, Sh. Vaibhav Gupta and Sanjay
Kumar Complainants

Sh. Hemant Thakur & Happy Thakur, Ld. Counsels
alongwith Sh. Suresh Kainthala complainant

Sh. Shakti Bhardwaj vice Sh. Ravi Tanta Ld. Counsel for
respondent promoter Sh. Balbir Singh Verma

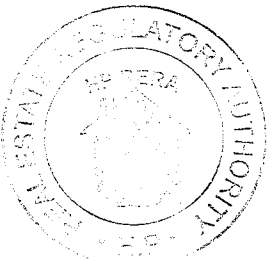
Date of hearing : 29.10.2024

Date of pronouncement : 14.11.2024

Interim Order

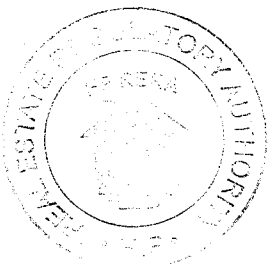
Coram:- Chairperson

1. These are four complaints filed against the same promoter qua the
same project primarily for similar reliefs. By way of this order this



Authority shall dispose off applications filed in all the aforesaid cases praying for framing of issues in the matters.

2. It was averred in the respective application(s) that after going through the record it was found that there are several disputed questions of fact and law involved in the aforesaid complaints and they call for framing of issues and leading evidence to reach at a logical end. By way of the application(s) certain issues have also been proposed.
3. Today Ld. Counsel for the respondent while arguing on the application has reiterated the contents of the application and submitted that in view of the disputed question of facts and law involved in the present complaints it is required that the Authority shall frame issues and permit the parties to lead evidence in the case. On the other hand the Ld. Counsel for the complainants have orally submitted that these applications are frivolous, not maintainable, baseless and have been filed with the ulterior motive to prolong the case and delay its outcome. It was further argued that there are no disputed questions of facts and laws involved in the present case. It was also further argued that the provisions of Code of Civil Procedure are not fully applicable to this quasi-judicial Authority while hearing complaints under the RERD Act. It was further argued that the as per Section 38(2) of the RERD Act the Authority is the master of its own procedure and has powers to regulate it. It was also argued that the proceedings carried out by this Authority are summary in nature and therefore there is no requirement to frame issues and permit the parties to lead evidence as it would tantamount to prolonging the proceedings as if it were proceedings before the Civil Court which they argued is a



time consuming and lengthy process. It was further argued that it was never the intention of the legislature to apply all the provisions of the Code of Civil Procedure particularly Order 14 of the Code of Civil Procedure and therefore this application is devoid of any merits and deserves to be dismissed out rightly.

4. This Authority has heard both the sides and also gone through the record. We are of the considered opinion that there is no mandate prescribed by the RERD Act, 2016 for the Authority to permit the parties to convert the proceedings before this Authority into a proceedings pending before the civil court in a civil trial. Section 38 of the RERD Act, 2016 reads as under

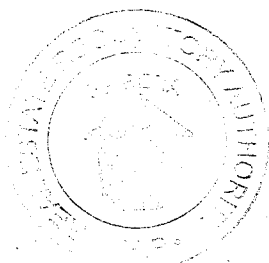
Section 38 Powers of Authority-

(1) The Authority shall have powers to impose penalty or interest, in regard to any contravention of obligations cast upon the promoters, the allottees and the real estate agents, under this Act or the rules and the regulations made thereunder.

(2) The Authority shall be guided by the principles of natural justice and, subject to the other provisions of this Act and the rules made thereunder, the Authority shall have powers to regulate its own procedure.

(3)

5. The mandate of Section 38 (2) is absolutely clear that the Authority shall have powers to regulate its own procedure. The Authority as per the aforesaid Section has to follow the principles of natural justice. Further, as per Section 35(2) also this Authority for the purpose of conducting investigation has the powers of the Code of Civil Procedure as prescribed under Section 35(2). Further in terms of the judgment passed by the Hon'ble High Court of H.P **Sumit**



Khanna and another Versus Kanchan Sunil Adani and others in CMPMO no. 408/ 2024 & 417/2024 dated 20.8.2024 it has been held as under

“15. A perusal of sub-section(2) of Section 35 of the Act would go to indicate that the Authority has been vested with the same powers as are vested in the Civil Court under the CPC while trying a suit in respect of the matters set out in sub-section and nothing more and nothing less.

*16. Meaning thereby, the RERA clearly enumerates those provisions of CPC that are applicable to the proceedings before it. Thus, **the Legislature has expressly made only the aforementioned provisions of CPC applicable to the RERA and is, therefore, deemed to have intentionally excluded the other provisions of CPC from its applicability to the proceedings.** Therefore, according to the principles of *expressio unius*, it can conveniently be held that *vide the expressio unius principle*, the RERA clearly enumerates the provisions of CPC that are applicable to the proceedings before it and on the same principle, the Legislature is, therefore, deemed to have intentionally excluded all other provisions of CPC from applying to the proceedings before the RERA.”*

6. As per Section 13 of the Act the agreement for sale defines the inter se liabilities between the parties. The allotment letter, agreement for sale and other documents appended in the case file are sufficient for the Authority to adjudicate on the various reliefs prayed for by complainants. The authority by way of the documents appended in the case can decide the other issues of common facilities and other obligation and duties cast on the promoter under Section 11, 12, 13, 14, 15, 16 & 17 of the Act. The Authority further with the help of all the aforesaid documents can also decide

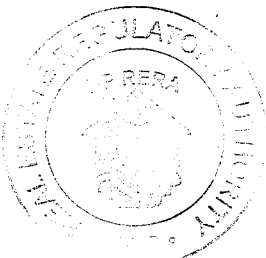


on the issue of duties of allottee stated under Section 19 of the Act as contended by the respondent. The entire interse liability and issues between the parties are very well spelt out and defined in the documents and there is no disputed question of fact which calls for framing of issues and leading evidence. The preamble of the Act which defines its purpose is as under:

“An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for **speedy dispute redressal** and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto.”

The Hon'ble Supreme Court in **Union of India Vs. T.R. Varma** MANU/SC/0121/1957; AIR1957SC882 has held that

“14. Now, it is no doubt true that the evidence of the respondent and his witnesses was not taken in the mode prescribed in the Evidence Act; **but that Act has no application to enquiries conducted by tribunals, even though they may be judicial in character. The law requires that such tribunals should observe rules of natural justice in the conduct of the enquiry**, and if they do so, their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with that, which obtains in a Court of Law.”



These principles were further fortified by the Hon'ble Supreme Court in **Bareilly Electricity Supply Co. Ltd. Vs. The Workmen and Ors.** MANU/SC/0501/1971; AIR1972SC330 and it was held that the law requires that tribunals even though they may be judicial in character, the **Evidence Act has no application to the enquires conducted by them. The law requires that principles of natural justice shall be observed in the conduct of the enquiry** and if they do so their decision is not liable to be impeached on the ground that procedure followed was not in accordance with law.

In **Municipal Corpn. of Delhi vs Jagan Nath Ashok Kumar (1987) 4 SCC 2316** it was held that Evidence Act is not applicable to arbitration proceedings.

The judgment of the **Hon'ble National Consumer Commission reported in 2002 (3) CLT 516** in cases titled as Con Décor rep. by its Managing Director vs Smritikana Ghose and another it was held that

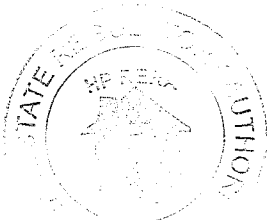
"We would, therefore hold that cross examination of witness or a party before forum under the Consumer Protection Act is not a rule. It is only an exception. When reputation of a person like a medical practitioner in the case of alleged medical negligence is involved, he will have a right to cross examine any person alleging professional negligence against him. 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 Consumer Protection Act, the whole object of this Act would be



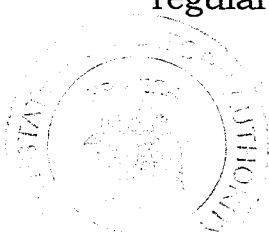
lost and there would hardly be any difference in proceedings before a forum under the Act and a civil court. Many disputes involving high stakes and huge values are decided in writ jurisdiction by the High courts and Supreme Court merely on the basis of affidavits. It, therefore, does not appeal to reason that when Consumer Protection Act permits evidence to be led by means of affidavits, right of cross examination must be resorted to in every case. A forum under Consumer Protection Act must exercise extreme caution in permitting cross examination.”

Further the proceedings before the National Consumer Commission are although judicial proceedings, but at the same time it is not a civil court within the meaning of the provisions of the Code of Civil Procedure. It may have all the trappings of the Civil Court but yet it cannot be called a civil court as held in **Bharat Bank Ltd. v. Employees of the Bharat Bank Ltd. [1950 SCR 459]** and **Nahar Industries Ltd. v. Hong Kong & Shanghai Banking Corporation etc. (Civil Appeal arising out of SLP (C) No. 24715 of 2008 etc decided on 29th July, 2009)**].

7. The law laid down in the aforesaid judgments as well as provisions mentioned here in above makes it absolutely clear that Evidence Act has no application to enquiries conducted by tribunals, forums or other quasi judicial Authorities even though they may be judicial in character. Further it is also clear that Evidence Act is not applicable to departmental enquiries, arbitration proceedings as well as before the Consumer Courts constituted under the Consumer Protection Act. The law requires that such tribunals should observe rules of natural justice in the conduct of the enquiries, and if they do so, their decision is not liable to be



impeached on the ground that the procedure followed was not in accordance with the one prescribed in Civil Court. Further it was also held in the judgments quoted herein above that cross examination of witness or a party is not a rule but is an exception. When it is merely a question as to veracity of the statement of the witness, cross examination cannot be permitted in a routine manner. If cross examination of a person is to be permitted in every case under the Real Estate (Regulation and Development) Act, 2016, the whole object of this Act would be lost and there would hardly be any difference in proceedings before the Authority under the Act and a Civil Court. Many disputes involving high stakes and huge values are decided in writ jurisdiction by the Hon'ble High Courts and Hon'ble Supreme Court merely on the basis of affidavits. The Authority while hearing complaints has to conduct an inquiry as mentioned in Section 35 (1), 36 of the Act and decide the issues pertaining the rights, duties and obligations of promoter, allottee and real estate agents under the Act apart from other functions of the Authority and for this the Authority has to decide its own procedure as given in Section 38 of the Act. As already held in para supra the entire interse liability between the parties is well spelt out and defined from the documents which calls for framing of issues and leading of evidence by way of examination to test the veracity of facts as prayed for by the respondent. By praying the veracity of facts to be tested by way of examination the respondent cannot be permitted to change the direction of the proceedings, which were fixed for arguments. If the Authority permits such examination of witnesses to be conducted in routine manner as in regular civil courts the entire purpose of the Act as mentioned in



the preamble for speedy adjudication and disposal of cases will be lost. The Authority is duty bound to observe the principles of natural justice as given under Section 38 (2) of the Act and the provisions of the Evidence Act and provisions of Code of Civil Procedure for framing of issues are not applicable to the proceedings before this Authority under the RERD Act, 2016. Therefore the application(s) in all the four cases filed by the respondent for framing of issues and permitting parties to lead evidence is hereby dismissed.

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Dr. Shrikant Baldi
CHAIRPERSON

