

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

NEW DELHI

FIRST APPEAL NO. NC/FA/316/2025

(Against the Order dated 12th March 2025 in Complaint SC/9/CC/2/2024 of the State Consumer Disputes Redressal Commission Uttar Pradesh)

PRESIDENCY INDRAHEIGHTS PVT. LTD.

PRESENT ADDRESS - 2201, 2ND FLOOR, TOWER-2, EXPRESS TRADE TOWER-2, PLOT NO.36, BLOCK B SEC-132, NOIDA-201301 GAUTAM BUDDHA NAGAR, UTTAR PRADESH.

.....Appellant(s)

Versus

RITA W/o. Winfred Charles Anchan

PERMANENT ADDRESS - FLAT NO1407 G LAKE POINT TOWER 14TH FLOOR MANIPUR COUNTRY ROAD NEAR BEGUR LAKE SINGASANDRA KUDLU BENGALURU BOMAMM , BENGALURU URBAN, KARNATAKA.

WINDFRED CHARLES ANCHAN S/o. Winfred Charles Anchan

PERMANENT ADDRESS - FLAT NO.1407, G LAKE POINT TOWER, 14TH FLOOR, MANIPUR COUNTRY ROAD NEAR BEGUR LAKE SINGASANDRA KUDLU BENGALURU BOMAMM , BENGALURU URBAN, KARNATAKA.

.....Respondent(s)

BEFORE:

HON'BLE MR. JUSTICE A. P. SAHI , PRESIDENT

HON'BLE MR. BHARATKUMAR PANDYA , MEMBER

FOR THE APPELLANT:

MR. RAGHAVENDRA PRATAP SINGH, ADVOCATE MR. AKSHAT KASHYAP,
ADVOCATE MR. MOHIT YADAV, ADVOCATE

DATED: 18/11/2025

ORDER

A. P. SAHI, J (PRESIDENT)

1. The Respondents / Complainants had filed a Consumer Complaint No. 2 of 2024, claiming refund along with interest, compensation as well as costs in respect of the booking of a Penthouse Unit developed and constructed by the Appellant. The same had been offered to the Complainant by the Appellant under a Builder Buyer Agreement for a consideration of Rs.93,04,680/- basic sale price being Apartment

No. T-1/2202 in the Presithum Project, Sector 35, Noida, Uttar Pradesh in the Yamuna Expressway Industrial Development Area. The deficiencies were alleged and an amount of Rs.58,09,873/- along with interest was sought to be refunded as according to the Complainants the Appellant has failed to abide by the promises made and offer the Penthouse in accordance with the terms of the agreement. The Complaint was entertained and as per the order sheet on record, notices were issued on 04.01.2024. An office report has been endorsed along with the proof of the notices having been dispatched by Registered Speed Post. The office report also endorses that the notices sent by Registered Speed Post had not been received back which endorsement is dated 18.04.2024. The case could not be taken up on 25.04.2024 and was fixed for 12.06.2024. The next date fixed was 15.10.2024. On 15.10.2024 the order sheet records that the case was called out and the Complainants Counsel Mr. Lavlesh Kumar was present. On behalf of the Appellant / Opposite Party the names of several Counsel have been printed but none appeared on their behalf and the case was again directed to come up on 20.11.2024.

2. The order sheet dated 20.11.2024 records that the case was called out and the Opposite Party / Appellant was granted four weeks' time to file a reply and the next date fixed was 12.03.2025.
3. The fact remains that the service of notice on the Appellant / Opposite Party had been effected and the Counsel had also put in appearance but no Written Version had been filed. The Order sheet dated 15.10.2024 also records the names of several Counsel appearing for Opposite Party / Appellant but no one had appeared. Nonetheless the Order sheet dated 20.11.2024 indicates that four weeks' time was granted to file the Written Version.

4. The Complaint was fixed for 12.03.2025 and it was finally disposed of on the said date by the Impugned Order on which date also no one appeared on behalf of Appellant / Opposite Party. However, the Impugned Order records that notices had been issued and therefore there was a valid presumption of service of notice.
5. There seems to be an error in the date recorded in the Impugned Order for issuance of notice that has been mentioned as 01.09.2024 whereas the correct fact is that the notices were issued on 04.01.2024. It appears that the said has been recorded inadvertently. Learned Counsel for the Appellant made a submission attempting to make capital out of the aforesaid incorrect mention of the date but we do not find it to be an argument worth acceptance for the reasons given hereinafter.
6. The Impugned Order further records that the Vakalatnama was filed by the learned Counsel for the Opposite Party / Appellant on 03.07.2024. This fact stands corroborated by the Order sheet dated 15.10.2024 which records the occurrence of the name of the Counsel of the Appellant / Opposite Party. The Written Statement was attempted to be filed on 24.07.2024.
7. The State Commission has recorded a finding that the said Written Statement could not have been filed after the expiry of the statutory period and therefore the Written Statement filed by the Appellant / Opposite Party beyond the prescribed time, the same cannot be read in opposition to the Complaint. The aforesaid finding has been questioned contending that a learned Single Member on 20.11.2024 had granted four weeks' time to file the Written Version and therefore the said limitation of 30 days could not be computed by the State Commission from the date of service of notice as the Commission itself had granted time to the Appellant to file the Written Version by the Appellant / Opposite Party which amounts to a valid extension of the

period.

8. With these pleadings and facts on record we had passed the following order on 23.06.2025 calling upon the learned Counsel for the Appellant to explain the same:

“Heard learned counsel for the appellant.

It is prima facie evident from the facts on record that the notices were issued in the complaint by the State Commission, which according to the appellant was issued on 04.01.2024, as stated in paragraph 6 (xvii) of the memo of appeal. Possibly notices were served and the endorsement of the postal receipt is contained on the order sheet which is at page 248 of the paper book. It has also been endorsed through an office noting that the notices which were sent have not been returned back. Presumably the notices were served, and in the memo of this appeal, it has been stated that the notice was timely communicated. The appellant instructed his counsel and the vakalatnama was filed on 03.07.2024. It is further stated that the written version was tendered on 24.07.2024.

It is therefore evident that the entire exercise of filing the written version was commenced after the expiry of 30 days as well as the 15 days grace period and consequently, the State Commission while proceeding to dispose of the matter has recorded this fact and finding that inspite of serviced of notice, the written statement cannot be taken on record as the same has been filed beyond the prescribed time as per the statute.

Prima facie the aforesaid fact remains undisputed and unchallenged. In such circumstances the right to file written version having been forfeited the present appeal has now been filed contending that the complainant had

defaulted in making payments and there was no default on the part of the appellant, as such the impugned order is unsustainable.

In the wake of the facts as recorded in the impugned order, the grounds of challenge as urged may not be possibly entertainable, nonetheless, learned counsel for the appellant, Mr. Mohit Yadav prays that he may be granted some more time to assist the Bench. He prays that the matter be taken up on 25.06.2025.

List accordingly.”

9. An adjournment was sought on 25.06.2025 to file the affidavit as indicated in the said order and accordingly the matter was adjourned for 03.07.2025 when it was directed to come up on 11.07.2025. An adjournment was again sought on 11.07.2025 when we passed the following order:

“Learned counsel Ms. Neelam Dekate states that the arguing counsel Mr. Yadav is unavailable today due to personal reasons and therefore the matter may be adjourned.

We may point out that we had framed an issue, prima facie, that require consideration on 23.06.2025.

Let the matter be listed on 16.09.2025. It shall not be adjourned any further.”

10. On 16.09.2025 further time was prayed for to file the affidavit as desired and in response thereto an affidavit has been filed by Mr. Mushir Ahmed stating that he is the Director and Authorised Representative of the Appellant and has stated the following facts in the said affidavit:

“....2. I state that only notice was issued in this case by way of registered post on 25.01.2024, which was received in my office on 31.01.24. I state that along with notice, my office also received some blank pages with the consignment, however, no copy of complaint was received along with the notice in my office.

3. I state that a Vakalatnama was sent from my office to the office of my counsel on 22.04.2024 through DTDC, to file it before State Consumer Commission, Lucknow. It was instructed to the counsel to get the complaint copy of this case and file appropriate response in this case.

4. I state that further instructions were issued from my office to my counsel on 23.04.2024, 21.05.2024 and 10.06.2024, regarding the status of the flat in question regarding which a notice was received in my office.

5. That pursuant to the instructions on email, my counsel tried to get the status of the case, and after requisite inquiry, he found that the case was last listed on 12.06.2024, before the commission, which had been adjourned to 15.10.2024.

6. I state that my counsel tried to get a copy of complaint on 12.06.2024, from the office of the counsel for the complainant and a copy of complaint was supplied to him. Thereafter, he filed Vakalatnama in this case on 03.07.2024 and written statement of the complaint on 24.07.2024.

7. I state that reply to the complaint has been filed by my counsel within 45 days of prescribed time period, from the date of receiving a copy of the complaint in this case. Thus, I request that reply of the complaint be taken on record and matter be sent before the State Commission for deciding the

case.”

11. The arguments commenced by the learned Counsel for the Appellant Mr. Raghvendra Pratap Singh on 11.11.2025 when the matter was heard finally and he urged that firstly the State Commission itself had granted time and extended the same for filing of the Written Version and even otherwise since the complete copy of the Complaint had not been served on the Appellant / Opposite Party therefore the Counsel for the Appellant attempted to receive a copy from the Counsel for the Complainant on 12.06.2024 which was received by him whereupon the vakalatnama was filed on 03.07.2024 and the Written Version was tendered on 24.07.2024. The submission is that counting from 12.06.2024 which is the date on which he has received a complete copy of the Complaint, the Written Statement had been filed on 24.07.2024 which was within 45 days of the receipt of the Complaint. This was within the prescribed time and consequently the conclusion drawn by the State Commission is erroneous.
12. At the outset having heard learned Counsel and having perused the entire records, the Appellant in Paragraph No. – 2 of the Affidavit filed on 06.11.2025 vide diary No. 29142, has categorically admitted that the notices that were dispatched by the Registered post by the State Commission was received in the office of the Appellant / Opposite Party on 31.01.2024. This fact is clearly stated in Paragraph No. – 2 of the said affidavit that has been extracted herein above. There is therefore no dispute that the notices issued by the State Commission stood served on 31.01.2024. The period of 30 days therefore ended on 02.03.2024 and the grace period of 15 days also came to an end on 17.03.2024.
13. The Appellant himself has come up stating that the vakalatnama was sent in April

2024 and some instructions were issued in April, May and June, 2024 as stated in Paragraph No. 3, 4 and 5 of the Affidavit extracted herein above. It is admitted that the vakalatnama itself was filed on 03.07.2024.

14. There is nothing on record to indicate that any defect or objection regarding the copy of the Complaint was made before the State Commission. Learned Counsel orally submitted that since the complete copy had not been given therefore the Counsel for the Appellant tried to get a copy of Complaint on 12.06.2024. This fact is not substantiated by anything on record nor is there any application or any other evidence to indicate that any objection was taken regarding the incomplete copy of the Complaint.
15. Apart from this there is nothing on record to indicate that the Written Statement which was tendered on 24.07.2024 was accompanied by any application to condone the delay in the filing of the Written statement.
16. Apart from this there is no order of the State Commission entertaining any such application or passing any orders thereon and therefore it is evident that the Written Statement seems to have been filed in a routine manner against the statutory provisions.
17. In the above background the order passed on 20.11.2024 by a learned Single Member of the Commission granting four weeks' time is meaningless and superfluous in the background when the Appellant / Opposite Party itself had stated that they had already filed their Written Statement prior to that on 24.07.2024. It is but natural that if the Written Statement had been filed on 24.07.2024, there was no occasion for the State Commission to have granted four weeks' time to file the Written Statement thereafter on 20.11.2024 and therefore the Order seems to have

been erroneously transcribed in a routine fashion which seems to be an error in the recording of the ordersheet. The Appellant cannot take any advantage of such a superfluous order which was meaningless for the purpose of seeking any advantage for the purpose of claiming extension of time to file the Written Version which even otherwise could not have been done by the Commission after the expiry of the statutory period.

18. Coming to the contentions raised with regard to the Written Statement having been filed within time, according to the admitted case of the Appellant they obtained the copy of the Complaint on 12.06.2024. The period of 30 days clearly expires on 12.07.2024. According to the Appellant the Written Version was tendered on 24.07.2024 which was beyond 30 days. There was no application for condonation of delay accompany the written version nor was there anything on record to indicate the same. The grace period of 15 days is available only if there was any request to condone the delay or any explanation regarding the filing of the Written Version beyond 30 days. In the absence of any such material even if the Written Version was tendered within 15 days after the 30 days had expired, no benefit can be claimed for the reasons indicated above.
19. Even though the story set up by the Appellant is not worth believing but nonetheless assuming for the sake of arguments that the Written Statement had been tendered on 24.07.2024 the same was clearly beyond the statutory period without any request for condonation of delay and was almost after 6 months of the service of notice on the Appellant. As noted above, the notices had been served on the Appellant on 31.01.2024. The law on this issue is settled by the Constitution Bench of the Apex Court in **New India Insurance Company Limited versus Hilli Multipurpose Cold Storage Private Limited reported in (2020) 5 SCC 757.**

20. Neither the State Commission had any power to extend any such time period nor the order sheet dated 20.11.2024 in any way is in conformity with the law laid down by the Apex Court.
21. Consequently for all the reasons stated herein above the Written Version of the Appellant could not have been entertained as the Appellant forfeited its rights to tender the same.
22. The Affidavit filed on 06.11.2025 referred to above therefore does not give any cogent or plausible explanation so as to explain the deficit in the filing of the Written Version within time. The Appellant therefore having failed to establish any reasonable ground, the conclusion drawn by the State Commission that the Written Version filed by the Opposite Party / Appellant could not be read against the Complainant for deciding the case is correct and cannot be interfered with.
23. Having said that since the present Appeal was basically filed alleging violation of principles of natural justice on the grounds that have already been discussed herein above, and there being no other ground on merits available, the Appeal lacks merit and is liable to be dismissed. We may point out that admittedly the Appellant has taken a ground that he could not get the constructions completed and the delay was caused due to some *force majeure* events including the Covid. These allegations are unsubstantiated and even otherwise the fact remains that the project was not completed within the stipulated period.
24. In such circumstances even otherwise there is no factual or legal ground available so as to interfere with the order passed by the State Commission on the grounds raised.
25. Consequently the Appeal fails and is hereby dismissed.

.....J
A. P. SAHI
PRESIDENT

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BHARATKUMAR PANDYA
MEMBER