J&K STATE CONSUMER DISPUTES REDRESSAL COMMISSION, SRINAGAR

C.C. 33, 34 & 36 OF 2019

DT. OF FILING: 23/05/2019, DT. OF DISPOSAL: 29/07/2026

1. **M/S LONE ENTERPRISES (C.C. 33/2019)**
2. **M/S MUDASIR ENTERPRISES (C.C. 34/2019)**
3. **M/S SHOAIB ENTERPRISES (C.C. NO. 36/2019)**
   THROUGH THEIR PROPERITORS, ALL RESIDENTS OF DONWARI, NEAR LOLAB VALLEY, KUPWARA, J&K.

--COMPLAINANTS

VERSUS

1. **GENERAL MANAGER, TATA AIG GENERAL INSURANCE CO. LTD., 15TH FLOOR, TOWER A, PENINSULA BUSINESS PARK, GANPATRAO KADAM MARG, OFF SENAPATI BAPAT MARG, LOWER PAREL, MUMBAI -400013**
2. **BRANCH MANAGER, AXIS BANK LIMITED, BRANCH OFFICE, REHIPORA, KUPWARA, KASHMIR.**
3. **ROMIT BAGGA, SURVEYOR, PCIS CRAWFORD, PURI CRAWFORD INSURANCE SURVEYORS & LOSS ASSESSORS INDIA PVT. LTD., CABIN NO. 304, SCO 218 & 219, 3RD FLOOR, SECTOR 34 A, CHANDIGARH 160 022.**

--OPPOSITE PARTIES

Coram:
Smt. Nighat Sultana, President (O)
Sh. Maheep Gupta, Member
Present:
Adv. N.A. SHALLA, Ld. Counsel for the complainant.
Adv. T.A. MALLIK, Ld. Counsel for O.P.1.
Adv. T.P. SINGH, Ld. Counsel for O.P. 2.
None for O.P. 3 (Ex-Parte)

Order dated 29/07/2026 (Per Mr. Maheep Gupta, Member)

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1. All the three complaints were filed on 23/05/2019 under the Jammu & Kashmir Consumer Protection Act, 1987 with identical facts and were clubbed together.

   In fact, one more complaint registered under Complaint No. 35/2019 was also clubbed with these three complaints, however, the same has been dismissed through a separate order of the even date, on the technical ground of lack of pecuniary jurisdiction.
2. Heard the Counsels, perused the records, appreciated the evidences led by the Complainant.
3. O.P. Bank was exempted to cause appearance in the very nascent stage of proceedings as no case was prima facie made up against it.

   O.P. 3 did not cause appearance and was set ex-parte.
4. The Complainants are before us being aggrieved of the alleged unjust repudiation of their claim by the O.P. Insurance Company.

   Perusal of the repudiation letters annexed by the complainants would reveal that all the letters were issued by the O.P. Insurance Company to the respective complainants on 26/04/2019 containing the identical language/ ground for repudiation.

   The relevant extract of the repudiation letter is reproduced below:

   > ***"It is noticed that locations having kutcha construction, i.e., structures consisting of walls and/or roofs of wooden planks/thatched leaves and/or grass/hay/bamboo/plastic/asphalt Cloth/canvas/tarpaulin and the like, stand excluded under the policy."***
   >
   > *As explained to you vide our email dated 08/04/2019 further to surveyor's letter dated 13.03.2019, we hereby reiterate that the subject claim is falling outside the policy purview in view of the above facts and breach of policy warranty"*

   It is an admitted case of the complainants that the roof of the shops was having wooden planks which were covered with CGI sheets as is the standard mode of construction in the topography. He also contends that the walls of the shop were built by using burnt bricks and cement.

He, therefore, alleges that the surveyor/insurance company is not justified in classifying his building as a "Kutcha Construction" and repudiating his claim on the ground.

5. The Ld. Counsel for the Complainant filed his final written arguments on 27/05/2025 and a copy of the same was provided on 30/05/2025 to Ms. Iqra, the junior counsel to the Ld. Counsel for O.P. who attended the proceedings on his behalf.
6. It is also important to note here that that not only did the O.P. Insurance Company failed to lead any evidence, it also failed to file its written arguments.
7. Since the entire crux of the dispute lied in the sole definition/justification of the kutcha construction, Ms. Iqra was directed to produce some authorized company official to assist this court on this aspect. She was also directed to file the final written arguments.

   It is, however, a matter of great concern and aguish that the Ld. Counsel for the O.P. Insurance Company failed to produce any authorized Company Official &/or file his written arguments despite repeated directions and passing of serious strictures passed by this Commission.

   It is also evident from the records of proceedings that the Ld. Counsel for the O.P. Insurance Company was quite non-serious in representing the case of his client as more often than not either nobody caused presence on behalf of O.P. or the proceedings were attended by some junior for the sole purpose of marking attendance and seeking endless adjournments.
8. It is only after initiation of the ex-party proceedings against O.P. 2 on 24/06/2026 that the Ld. Counsel eventually caused his presence and advanced his verbal arguments on 23/07/2026 and the matter was finally reserved for orders.
9. Ld. Counsel for the O.P. Insurance Company argued that not only the Company is justified in repudiating the claim of the Company due to breach of the warranty expressly mentioned on the face of the policy schedule, but also raised the additional ground that an investigator was deputed by the insurance company who concluded that the fire was a self-inflicted one with a malicious intent, which is not indemnifiable under any insurance policy.

10. From the perusal of the repudiation letter dated 26/04/2019, it is observed that the sole ground taken by the Insurance Company was the breach of warranty.

    Further, from the perusal of the Written Statements filed by the O.P. Insurance Co., we find that although the same contains a reference of deputation of an investigator, no such ground raising doubts on the cause of loss were raised by the O.P.

11. It is a settled legal preposition that it is not permissible to take any additional ground in addition to the ground taken by it in the repudiation letter. Moreso in the instant case no such ground has been taken in the written statement, and no evidence was led by the Insurance Company hence it becomes all the more prohibitive to take cognizance of the investigation report and/or its findings.

    Interestingly, the investigator deputed by the Insurance Company concluded that, ***"The possibility of a malicious act of engineering a fire, with the intention of slapping a fraudulent claim on the Insurance Company cannot be ruled out."***

    Even if the said conclusion arrived at by the Investigator is taken cognizance, it is just a hint/possibility and by no stretch of imagination can be construed to be a conclusive proof of a self-inflicted fire by the Complainants as tried to be projected by the Ld. Counsel for the O.P. Insurance Company and perhaps this could precisely be the reason that the said ground was not taken by the O.P. Insurance Company either in its repudiation letter or in its written statement.

    We would also like to refer para 1.04 of the survey report in which is quite contrary to the **seemingly self-manufactured argument** of the self-inflicted fire as advanced by the Ld. Counsel for the O.P. Insurance Company. The relevant extract of para 1.04 of the Survey report is reproduced below:

> ***" ….. preliminary discussions/ verifications conducted by the investigator reveals that incident was accidental in nature……..."***

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12. The only defense, thus, available to the O.P. Insurance Company is the breach of warranty. The stand taken by the Complainant on this issue has already been discussed, hereinbefore.

13. The main issue, therefore, for determination before us is whether the Insurance Company is justified in repudiating the claim on the ground of the breach in warranty?

Admittedly, there is a clear breach of an express warranty that would prima facie justify the repudiation of the claim in normal circumstances depending upon the reasonability of the warranty imposed by the Company.

We are also not oblivious of the fact that it is not permissible for the courts to rewrite the terms, conditions & the warranties of the policy and neither is it open for the courts to interpret the same in some other manner.

However, at the same time, we are equally convinced that it is nonetheless very much permissible to check the question of reasonability of the terms, conditions and warranties of the policy.

It needs no rocket science to prove that in whole of the Kashmir region or for that matter in any mountainous area prone to snowfalls, the topmost roofs of the buildings are constructed in a similar manner with wooden planks covered with the CGI sheets. It is only in case of multi storied building that the roofs, other than the top most roof, are casted in concrete.

We are not inclined to believe that the Insurance Company is/was not aware of this open secret.

We are, therefore, of the considered opinion that imposition of such a warranty despite knowing fully well the topography of the area and standard practices adopted for building the roofs, the Company should not have imposed such an unreasonable warranty at the first place.

To put it aptly we must say that imposition of such a warranty itself is highly unwarranted.

Under these circumstances, we are left with no other option but to hold that the warranty itself is an unwarranted one and the Insurance Company is not justified in resorting to the same for repudiation of the claim. We, therefore, hold the O.P. Insurance Company guilty of deficiency in service.

14. Further, we had and still continue to have a genuine doubt in our mind as to whether this warranty is applicable to the building structures alone or the contents therein as well. Our doubt is strengthened by another warranty imposed in the policy, namely the basement warranty which reads as, "Warranted that basements and contents thereof are not covered under the policy" which unlike the warranty of Kutcha Constructions explicitly provides for excluding both the structural losses as well as the loss of contents stored therein.

It is precisely with the objective of getting the necessary clarity that prompted us to direct for presence of some authorized official of the Company to clear the doubt in our mind.

Not only did any Company official bothered to extend the necessary assistance to us, but the learned Counsel for the O.P. insurance Company also failed to provide any clarity on the issue.

15. Having held the Insurance Company guilty of deficiency in service, we are now left with the determination of the compensation that needs to be paid to the complainants.

16. From the perusal of the records, we find that the Survey Report was filed by the Insurance Company along with its written statement. From the perusal of the said report, we find that although the Surveyor highlighted the breach of the warranty but nevertheless quantified the loss as well and left it to the discretion of the Company to take a call on the final admission of liability under the policy terms & conditions. The brief extract of the assessment made by the Surveyor is reproduced below:

	C.C. NO.		
Particulars	**33/2019**	**34/2019**	**36/2019**
Value of reportedly affected stocks being claimed by the insured & verified from invoices / cash voucher / gross loss	31,07, 413	34,84,885	31,08,095
Less amount yet to be paid to various sellers (Non insurable interest) @ 85% / 72.49% & 78.748%	24,89,042	25,26,082	24,47,574

Value of loss (even if we consider it as insurable interest)	6,18,371	9,58,800	6,60,521
Less: Deduction on account of variation in Qty/Rate variation/Non maintenance of proper records/ books of accounts if any @ 10%	61,837	95,880	86,052
Balance Amount	5,56,534	8,62,920	5,94,469
Less: Dead Stock / Handling loss @2.5%	13,913	21,573	14,862
Amount / Value At risk of stocks	5,42,621	8,41,317	5,79,607
Less: Salvage	101	147	107
Assessed Loss	5,42,520	8,41,200	5,79500
Less: Policy excess @ 5%	27,126	42,060	28,975
Net Adjusted Loss	5,15,394	7,99,140	5,50,525

17. Ld. Counsel for the Complainant vehemently objected to the deductions made by the surveyor on the ground of alleged non-insurable interest @ 85% / 72.49% & 78.748% respectively.

He vehemently contended that the all the complainants were indulged in the trade of walnut kernels and the procurements are made from the local horticulturists. He further submitted that the trade is seasonal in nature in which the procurements generally start from the month of September and the sales season start from the month of December and continues till March. He further submits that at the time of procurement only a token money is paid to the respective vendors and rest of the money is paid to the vendors gradually to them after the start of the sales season in lines with the normal practice.

He also claims that the said information was duly provided to the Surveyor and the necessary cash supporting documents to substantiate the loss were duly provided to the Surveyor.

He, therefore, contends that once the surveyor was supplied with all the requisite information/ supporting documents, there was no cause for the Surveyor to treat the stock representing the genuine debt payable by the Complainants to the different vendors as the stock lacking the insurable interest and make any sort of deduction on this ground.

18. We have perused the Survey report and find that Para 3.04, 3.05 and 3.06 of the survey report are perfectly in sync with the submissions made by the Ld. Counsel for the Complainants of having informed the surveyor of the business practices adopted by the complainants &/or having provided all the requisite information to the Surveyor.

    It is also not under dispute that no proper books of accounts were maintained by the Complainant and the entire trade was carried on the basis of cash vouchers containing the details of procurement price/ amount paid and outstanding.

    It is also not under dispute that the outstanding debt was calculated by the Surveyor on the basis of the compilation of the cash vouchers as referred to above but to hold that the complainants lack the Insurable interest in respect of the stocks representing the outstanding debt is clearly and definitely against both the principles of Insurance and the principles of trade.

    It is a well settled legal principle that the ownership rights in goods automatically and simultaneously gets transferred to the buyer with the transfer of goods irrespective of the fact whether the goods were purchased on cash or credit or under any deferred mode of payment.

    Once the ownership rights got transferred in favour of the Complainants, the question as to lack of insurable interest should not have been raised by the Surveyor.

    We are, therefore, in agreement with the Ld. Counsel that the deduction made by the Surveyor on this count is not justified.

19. Under the given circumstances, the surveyor should have at the most treated the claim of the insured as a non-standard on account of non-maintenance of the proper books of accounts rather than making the unwarranted deductions @ 85% / 72.49% & 78.748%, respectively.

20. We, therefore, feel that the fair assessment of the loss should have been as under:

Particulars	C.C. NO. 33/2019	34/2019	36/2019
Value of reportedly affected stocks being claimed by the insured & verified from invoices / cash voucher / gross loss	31,07, 413	34,84,885	31,08,095
Less: 25% on account of non-maintenance of proper books of accounts.	7,76,853	8,71,221	7,77,024
Balance	23,30,560	26,13,664	23,31,071
Less: Deduction on account of possible variation in Qty/Rate variation @ 10%	2,33,056	2,61,366	2,33,107
Balance	20,97,504	23,52,298	20,97,964
Less: Dead Stock / Handling loss @2.5%	52,438	58,807	52,449
Balance	20,45,066	22,93,491	20,45,515
Less: Policy excess @ 5%	1,02,253	1,14,675	1,02,276
Net Adjusted Loss	**19,42,813**	**21,78,816**	**19,43,239**

Since, a total loss has taken place there is no question of applying any average clause on account of under insurance & since the net adjusted loss in all the cases is less than the policy Sum Insured the entire amount of the net adjusted loss should have been paid by the Company to the complainants.

21. We are also of the considered opinion that besides the net adjusted loss as calculated above, the Complainants need to compensated adequately for the litigation expenses incurred by them & for their opportunity loss caused by the delay in payment of their claims.

22. The insurance Company is liable to pay an amount of Rs.30,96,667/-, 34,69,798/- & 30,97,341/- to the complainants as calculated below:

Particulars	**C.C. 33/19**	**C.C. 34/19**	**C.C. 36/19**
Net adjusted loss.	19,42,813	21,78,816	19,43,239

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Compensation for the opportunity loss on account of delay in payment thereby depriving the complainants of the opportunity to invest the same in their business calculated @ 8% on the net adjusted loss calculated from the date of repudiation of claim, i.e., 26/04/2019to the date of instant order, i.e., 29/07/2026 – total 2651 days.	11,28,854	12,65,982	11,29,102
Compensation for litigation expenses.	25,000	25,000	25,000
Total	**30,96,667**	**34,69,798**	**30,97,341**

Order:

1. The Complaints are allowed and the O.P. Insurance Company is directed to pay Rs.30,96,667/-, 34,69,798/- & 30,97,341/- to the complainants under complaint number 33/2019, 34/2019 and 36/2019 respectively within 30 days of this order failing which it shall be further liable to pay interest @6% p.a. on the entire amount of Rs.30,96,667/-, 34,69,798/- & 30,97,341/- to be calculated from 30/07/2026 till the final deposition of amount.
2. Parties to bear their own costs.
3. Office is directed to provide a certified copy of this order to all the stakeholders and consign the file to records after due compilation.

Announced on 29/07/2026.

(Maheep Gupta)
Member, JKSCDRC

(Nighat Sultana)
President (O), JKSCDRC

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