

**IN THE NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
AT NEW DELHI**

NC/RP/381/2022

(Against the order dated 06.08.2021 in Appeal No. 2630/2012 of the State
Consumer Disputes Redressal Commission, Uttar Pradesh)

Secretary, Lucknow Development Authority

... Petitioner

Versus

Bahar Akhtar

... Respondent

BEFORE:

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

HON'BLE MR. BHARATKUMAR PANDYA, MEMBER

For the Petitioners : Mr. Abhishek Chaudhary, Advocate

For the Respondent : Ms. Akansha Srivastava, Advocate

Dated : 08.09.2026

ORDER

1. There is a delay of 126 days in the filing of the revision petition.

Having heard learned counsel for the petitioner, Mr. Chaudhary and advocate Akansha Srivastava for the respondent, we are satisfied that the delay in the filing of the revision petition deserves to be condoned. Accordingly the revision petition is entertained for being heard on merits.

2. The bone of contention between the parties has been noted in the order passed by this Commission on 20.04.2022, while issuing notice. The same is extracted herein under:

"One of the contentions raised by Mr. Abhishek Chaudhary, learned Counsel appearing for the Petitioner is that the U.P. State Consumer Disputes Redressal Commission, Lucknow

*(hereinafter, 'the State Commission') while passing the Impugned Order dated 06.08.2021 had decided the Appeal on merits also when the Application seeking condonation of delay has been rejected which could not be done in view of the judgment of the Hon'ble Supreme Court passed in **Civil Appeal No.9161 of 2019 titled M/s. Singai Udyog vs. National Insurance Co. Ltd. & Ors., decided on 02.12.2019.** Even otherwise on merits, he submitted that the Order passed by the State Commission is contrary to the Law and Evidence already on record as the area of Shop No.UGF-98 is 14.57 sq. mtr. whereas Shop No. UGF-86 was of only 12 sq. mtr. and Shop No.UGF-98 is corner shop for which more price was to be paid. The Matter requires consideration.*

Issue notice to the Respondent on the Memo of Revision, as also Interim Applications, returnable on 26.08.2022. List on 26.08.2022."

3. The dispute relates to the allotment of a shop at Balaganj Shopping Centre, Lucknow developed by the petitioner Development Authority. The shops were to be allotted on higher purchase basis and according to the complainant he was allotted shop no. UGF-86 of an approximate area of 12 sq. m. The complainant alleges that since the said allotment was not congenial for running his business therefore a request was made

to change the shop from UGF-86 to UGF-98. The said change of allotment was made on the same terms and conditions.

4. The physical possession of the shop was delivered according to the complainant on 19.02.2001, but the complainant was surprised to find that the shop was only of 8 sq. m., whereas the allotment had been made of a 12 sq. m. shop.
5. The complainant states that the estimated cost of the said shop was Rs.2,41,600/-, 25% whereof was to be deposited immediately and the balance of the amount was required to be deposited in four quarterly instalments. Representations were moved and it was informed that the complainant had deposited a sum of Rs.61,000/- on respective dates from 2000 to 2003. The complainant wanted a final costing and having failed to get any relief, preferred Consumer complaint no. 662 of 2009 before the DCDRC-II, Lucknow.
6. During the pendency of the complaint, the complainant moved an application for appointment of an advocate Commissioner and vide order dated 18.08.2010, a commissioner was appointed, who in compliance of the said order visited the spot on 28.10.2010 and conducted the survey in the presence of the Assistant Engineer and the Junior Engineer of the Development Authority. A

measurement was also carried out and it was found that one Mr. Harsh Malhotra informed that shop no. UGF-97 had been allotted to him and the Development Authority has given physical possession to him in 2001. The shop on the left side of the staircase of the complex was found in possession of Mr. Malhotra and the second adjacent shop was in the possession of the complainant, but there was no numbering on these shops. Accordingly the Commissioner prepared a sketch reporting that in effect the complainant was in possession of shop no. UGF-97 with an area of 8.1039 sq. m. and that UGF-98 was in the possession of Mr. Harsh Malhotra, which had an area of 11.7216 sq. m. The area of the shop and the description aforesaid and the status of possession was explained in paragraph 6 and 7 of the said report which are extracted herein under:

"6. That the area of both the shops as per the measurement taken at the actual site is as follows:

A. Area of shop UGF-97 in possession of the complainant:

$$\frac{3.22 + 3.92}{2} \times \frac{2.90 + 1.64}{2} = 8.1039 \text{ sq. m}$$

B. Area of shop UGF-98 in possession of the Sri Harsh Malhotra:

$$\frac{3.62+3.30}{2} \times \frac{3.42+4.50}{2} = 11.7216 \text{ sq.m.}$$

7. That the area of the shop whose possession has been given to the complainant is 8.1039 square meters. In this regard, it has been stated by the Engineers present on behalf of the opposite party that the numbering of shops was not marked at the time when the possession of these shops was given and possession was given on the basis of presumption. In fact, the possession of the shop which should have been given to the complainant was mistakenly given to Sri Harsh Malhotra and the possession of the shop which should have been given to Sri Harsh Malhotra was given to the complainant. Thus it is stated by the Engineers that as per the present layout, Shop No. UGF-97 is in possession of the complainant Shop No. UGF-98 is in possession of Mr. Harsh Malhotra.

Sir, the measurement / inspection report of the disputed shop done by me in compliance with the order dated 18.8.2010 is submitted for kind perusal without any malice."

7. After exchange of affidavits the complaint was allowed directing the opposite party to receive the balance amount of the total cost in respect of the allotted shop No. UGF-98 and to execute the registration in favour of the complainant within two months and also pay Rs.2,000/- as litigation costs. This order was passed by the District Commission on 21.02.2011, against which the Development Authority filed FA/2630/2012. The State Commission

dismissed the appeal upholding the order of the District Commission, against which the Development Authority has come up in the revision petition, where notices were issued as indicated above.

8. Parties have exchanged their written submissions and they have been heard today finally.
9. Mr. Chaudhary, urged that the directions given by the fora below to only receive the principal balance amount and execute the conveyance deed is incorrect, in as much as, admittedly the complainant has not paid the entire amount and as such the Development Authority is entitled to receive interest thereon. He therefore submits that the complainant/ respondent is in possession and therefore he has to make the payment otherwise, the conveyance cannot be executed.
10. We have considered the submissions raised and we find that essentially the dispute is about any interest being charged by the Development Authority on the balance of the principal amount which had been directed to be paid by the District Commission. Learned counsel submits that the direction of the fora below falls short of the payment of interest which has to be levied as this is public property and the allotted shop which is in the possession of

the respondent can only be conveyed if the chargeable interest is paid.

11. He further submits that there is a direction to pay Rs.5,000/- as costs which is not justified.
12. We have considered the submissions raised and we find that the issue still remains as to the number of the shop allotted and the actual shop in possession of the complainant/ respondent. The revision petition alleges that the complainant had altered the shop and therefore he cannot take any undue advantage of the same, as the complainant had been allotted and given possession of shop no. UGF-98 and therefore he was liable to pay the cost of the said shop.
13. The question as to which shop was allotted and of what area will have to be clarified by the petitioner - Development Authority and then raise a demand accordingly. We are therefore not interfering with the impugned order in so far as it grants the relief to the respondent/ complainant regarding the allotment of a shop. However, the identity of the shop, its area and the consequential price to be paid as per the allotment will have to be once again determined by the Development Authority on the basis of the letter of allotment and also the actual possession given to the

complainant in view of the facts stated in the Advocate Commissioner's Report quoted above. The amount demanded by the Development Authority in paragraph 2.11 is as follows:

Annexure P-12
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LUCKNOW DEVELOPMENT AUTHORITY
VIPIN KHAND, GOMTI NAGAR, LUCKNOW - 226010

DEMAND NOTE MEMO FOR O.T.B. 17-18

FINAL ACCOUNT REPORT AS 13/01/2018 FOR REGISTRY. 19/01/2018

Registration : 2968056
Applicant Name : BAHAR AKTHAR
Address : 182/9, MASHAKGANJ, LUCKNOW
Registration : 16000 00
Penal Interest calculated @ 18 % SIMPLE INTEREST for instalment dues & @ 18% for service

Property No : 98(278633)
Scheme : BALAGANJ
Sector : BALAGANJ
Property Cost : 23,618 00
Interim or : Final

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@ 19766 =

Due/Special Instalments Information

Instalment	Due Date	Interest	Paid	Int Paid	Total Int
4400.00	31/12/2002	0.00	4400.00	50.10	50.10
47726.00	05/01/2003	7705.00	47726.00	122978.40	122978.40
47726.00	05/04/2003	5904.00	47726.00	122429.19	122429.19
47726.00	05/07/2003	4022.00	47726.00	120575.49	120575.49
47726.00	05/10/2003	2053.00	0.00	17388.82	122693.74
1000.00	30/03/2017	0.00	1000.00	0.00	0.00
236304.00		10638.00	188578.00	383422.00	488726.92

REGISTRATION ID : 2956056

Deposits Against Property

Challan Id	Dep. Date	Amount
4911425	18/10/2009	18000.00
272393	19/02/2001	3000.00
1713647	27/11/2001	26000.00
3218922	04/01/2003	28000.00
10030266	30/03/2017	306000.00
10042900	27/06/2017	200000.00
10045762	14/07/2017	200000.00
Total :		587800.00

Accounts Summary as 13/01/2018

(a) Total Interest Charged	:	488726.00
(b) Interest Adjusted	:	383422.00
(c) Balance Interest	:	105305.00
(d) Balance Due Amount Till Date	:	48726.00
(e) Balance Principal & Tax as on 15/07/2017	:	0.00
(f) Remaining Principal Amount	:	0.00
(g) Tax on principal Amount	:	0.00
(h) Interest on balance Principal till di	:	0.00
(i) Total Due Amount	:	154031.00
(j) Net Due Amount	:	154031.00
	Rebate	0.00
	Amount	0.00

You OTB Application has been accepted. Please deposit the first instalment of the net due amount Rs. 77018 by 13/01/2018 second instalment of Rs. 77018 by 13/02/2018 **FAILING WHICH THIS DEMAND MEMO WILL BE TREATED AS**

NOTE: If the first instalment is deposited after due date but before the second instalment's due date, then simple payable on the first instalment amount for the delayed period.

Due Type	Due	Due Date
O.T.S CHARGES	1000 00	03/30/2017

80
13/12/2017

1
14/12/17
(S.A.M.)

14. The calculation sheet/ demand note for one time settlement has also been filed on record which reflects the allotment of property no. UGF-98, measurement 11.719 sq. m.. This demand notice is of 18.01.2018.
15. The District Commission decided the matter on 21.02.2012, after taking on record an Advocate Commissioner's report which was long before the aforesaid modified demand and referred to in the revision petition. The possession of the shop is there with the complainant, but it's number and area has to be identified for raising the demand keeping in view the facts stated above including the Advocate Commissioner's report. The Development Authority shall therefore first identify the shop and its measurement in possession of the complainant and then be entitled to receive only the balance of the principal amount as directed by the District Commission keeping in view the allotment made in favour of the complainant and proportionate to the shop together with its area allotted to the complainant and in his possession.
16. However, the said balance of payment has to be made by the complainant as directed by the District Commission together with 6% interest thereon to be calculated from the date of possession

as admitted by the complainant in paragraph 5 of the complaint that is 19.02.2001. The interest shall be payable only on the balance of the principal amount to be calculated in terms of the allotment and as directed hereinabove.

17. The demand shall be raised by the Development Authority within one month and the complainant shall make financial arrangements to satisfy the said demand within two months thereafter. Once the amount is cleared, the Development Authority shall proceed to execute the conveyance deed immediately after the payments are made.

18. The revision petition is therefore partly allowed to the extent indicated above. The order of the fora below stands accordingly modified and confirmed. The revision petition stands disposed off accordingly.

Brahm/VM/Court-1/15

Sd/-

(A.P. SAHI, J.)
PRESIDENT

Sd/-

(BHARATKUMAR PANDYA)
MEMBER