NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

NEW DELHI

REVISION PETITION NO. NC/RP/919/2025

(Against the Order dated 10th December 2024 in Appeal No. SC/9/A/2650/2014 of the State Consumer Disputes Redressal Commission Uttar pradesh)

WITH

NC/IA/7870/2025 (STAY)

NC/IA/7869/2025 (EXEMPTION FOR FILING OFFICIAL TRANSLATION)

NC/IA/7873/2025 (EXEMPTION FOR FILING EVIDENCE)

NC/IA/7871/2025 (CONDONATION OF DELAY)

NC/IA/7872/2025 (EXEMPTION FROM FILING THE CERTIFIED COPY)

GDA .....Petitioner(s)

PRESENT ADDRESS - GORAKHPURGORAKHPUR,UTTAR PRADESH.

Versus

PREMLATA DEVI .....Respondent(s)

PRESENT ADDRESS - GORAKHPURGORAKHPUR,UTTAR PRADESH.

BEFORE:

HON'BLE AVM J. RAJENDRA AVSM VSM RETD. , PRESIDING MEMBER

HON'BLE MRS. JUSTICE SAROJ YADAV , MEMBER

FOR THE PETITIONER: FOR THE PETITIONER MR. AMIT SHARMA, ADVOCATE

FOR THE RESPONDENT: FOR THE RESPONDENT MR. RAMESH CHANDRA, ADVOCATE , ALONG WITH MR. GAURI SHANKAR, HUSBAND OF THE RESPONDENT

DATED: 06/11/2026

ORDER

JUSTICE SAROJ YADAV, MEMBER

1. The instant Revision Petition has been preferred under Section 58(1)(b) of the Consumer Protection Act, 2019 by the Petitioner/Revisionist, Gorakhpur Development Authority (hereinafter referred to as "GDA" or "Petitioner Authority"), through its Secretary, assailing the impugned judgment and final Order dated 10.12.2024 passed by the Learned State Consumer Disputes Redressal Commission, Uttar Pradesh,

Lucknow (in short, the "learned State Commission") in Appeal No. 2650 of 2014. Vide the said impugned Order, the learned State Commission allowed the appeal preferred by the Respondent/Complainant, Smt. Prem Lata Devi, set aside the Order dated 12.11.2014, passed by the learned District Consumer Disputes Redressal Forum, Gorakhpur (in short, the "learned District Forum") in Consumer Complaint No. 131 of 2010—whereby GDA had been directed to refund a sum of Rs.1,76,363/- along with simple interest @ 9% per annum from the date of filing of the Complaint—and directed GDA to deliver physical possession of LIG House No. B-291, Buddh Vihar Residential Scheme (Part-C), Gorakhpur, to the Respondent/Complainant within a period of three months and ensure execution of the registered sale deed in her favour.

2. The succinct facts culminating in the present revision petition are that on 05.03.2004, the Respondent registered herself under the Buddh Vihar Residential Scheme (Part-C) floated by GDA for an LIG tenement admeasuring 60 sq. meters, against an estimated tentative cost of
Rs.2,33,178/- (stated as Rs.2,33,176/- in the complaint), by depositing a registration sum of Rs.23,318/-. The allotment was floated on a "first come, first served" basis, and House No. B-291 was allocated to the Respondent. In terms of the allotment schedule, an amount of
Rs.58,249/- was payable towards initial allotment and the residual consideration was to be liquidated in regular monthly instalments of
Rs.2,445/-.

3. According to GDA, the Respondent defaulted in liquidating the instalment schedule despite the issuance of multiple demand letters between 2004 and 2006 (namely, Letter Nos. 53 dated 17.03.2004, 72 dated 19.03.2004, 400 dated 21.09.2004, 547 dated 01.03.2005, 778 dated 30.06.2005, and 1175 dated 01.07.2006). GDA stated that an alleged final notice was issued on 05.10.2007, followed by a notice dated 28.01.2009 requiring the Respondent to liquidate the outstanding demand of Rs.1,74,894/- by 16.02.2009. GDA claimed that upon failure to

satisfy the outstanding amount, the allotment was cancelled on 07.03.2009, intimation whereof was communicated and an alleged refund Cheque No.11952926 dated 05.03.2010 for Rs.93,492/- was dispatched by registered post after deducting administrative charges. GDA further contended that the subject flat was subsequently re-advertised in newspapers and re-allotted to one Smt. Maya Singh, W/o Kashinath Singh, in whose favour a registered sale deed was executed and possession handed over, and who subsequently transferred the property to one Bahoti Jaiswal.

4. Aggrieved by the imminent threat of dispossession and cancellation, the Respondent instituted Consumer Complaint No. 131 of 2010 before the learned District Forum on 13.04.2010. The Respondent submitted that she had deposited Rs.58,249/- on 24.12.2008; that during the relevant interregnum, her husband, Shri Gauri Shankar, suffered from a critical, life-threatening medical illness requiring urgent relocation to New Delhi for emergency and prolonged specialized medical management at the All India Institute of Medical Sciences (AIIMS); and that the overwhelming financial strain impeded immediate remittances. The Respondent brought this grave medical distress to the notice of GDA vide a detailed written representation dated 22.04.2009, requesting an opportunity to clear the arrears. Subsequently, the Respondent deposited a substantial sum of Rs.1,25,000/- on 12.04.2010 under Receipt No.11700, and expressed readiness to liquidate the nominal balance. The Respondent prayed for restraining GDA from taking coercive measures or cancelling the allotment, an Order directing delivery of physical possession, execution of the registered sale deed in her favour, and Rs.8,000/- towards litigation expenses.

5. In its Written Statement dated 31.07.2010 filed before the learned District Forum, GDA traversed the allegations, contending that the Complaint was grounded on false averments; that the Respondent was grossly negligent in paying the instalments; and that no exemption could be granted on medical grounds. Crucially, in paragraph 16 of the said Written Statement, GDA pleaded: "Until the defendant is paid in full, the

defendant will not execute a registered sale deed". The Written Statement was silent as to the specific date of cancellation, the particulars of any dispatch of the cancellation order, or the re-allotment and third-party conveyance.

6. The learned District Forum, vide Order dated 12.11.2014, noted that the Respondent had deposited an aggregate consideration of Rs.2,35,151/- as established by GDA's own statement of account dated 16.07.2012. However, the learned District Forum observed that the cancellation was effected on 07.03.2009 prior to the institution of the complaint and that the property stood re-allotted, registered, and handed over to a third party, rendering re-allotment of the said unit impossible. The learned District Forum further recorded that although GDA claimed to have remitted a refund cheque of Rs.93,492/- by registered post, it failed to place on record any bank statement of account to establish that the cheque was ever encashed or debited from its account. The learned District Forum proceeded to sanction a 25% administrative deduction from the deposited sum of Rs.2,35,151/- and directed GDA to refund Rs.1,76,363/- to the Respondent along with simple interest @ 9% per annum from the date of filing of the complaint until final realization, within one month.

7. Dissatisfied with the grant of a monetary refund in lieu of specific delivery of possession, the Respondent preferred Appeal No. 2650 of 2014 before the learned State Commission. The learned State Commission, vide the impugned Order dated 10.12.2024, observed that Document No.34 on the record demonstrated that the Respondent had deposited Rs.2,35,151/- covering the full purchase price of the house. Holding that the learned District Forum had acted contrary to law in granting a refund instead of possession, the learned State Commission set aside the Order dated 12.11.2014 and directed GDA to deliver possession of LIG House No. B-291 within three months and ensure registration of the sale deed in favour of the Respondent.

8. Impugning the said Order dated 10.12.2024, GDA has preferred the instant Revision Petition before this Commission.

9. Learned Counsel for the Petitioner/GDA, submitted that the learned State Commission passed the impugned Order in a perfunctory manner without considering that the allotment stood lawfully cancelled as far back as 07.03.2009 due to persistent defaults in satisfying multiple demand notices dated 17.03.2004, 14.03.2004, 21.09.2004, 01.03.2005, 30.06.2005, 01.07.2006, and 28.01.2009. The cancellation of allotment was never specifically assailed or challenged by the Respondent in the prayers before the learned District Forum or the learned State Commission.

Leanred Counsel for the Petitioner/GDA further submitted that property in question was re-advertised in newspapers and allotted to Smt. Maya Singh in accordance with the rules, in whose favour a sale deed was executed and physical possession delivered, who in turn transferred the property to one Bahoti Jaiswal. Third-party rights have settled, and consumer fora cannot compel specific delivery of an immovable property that has already vested in third parties who are not parties to the *lis.*

Ld. Counsel placed reliance upon the decision of the Hon'ble Supreme Court in ***Rajasthan Housing Board & Anr. v. Ratan Devi, (2020) 14 SCC 797,*** to contend that when an allottee commits protracted default and the allotment is cancelled and re-allotted to another purchaser, consumer fora cannot compel delivery of possession, and the only equitable relief is a refund of the deposited sum with interest.

10. *Per contra,* Ld. Counsels for the Respondent/Complainant, submitted that the Revision Petition discloses no jurisdictional error warranting interference under Section 58(1)(b) of the Act; that the entire narrative of cancellation, dispatch of the refund cheque, and third-party transfer is unsupported by cogent proof of delivery or bank debit; that GDA accepted substantial consideration of Rs. 2,35,151/- and kept the allotment alive as admitted in its Written Statement and statement of accounts; and

that, in terms of ***R.K. Saxena v. Delhi Development Authority, I (2001) CPJ 23 (SC),*** acceptance of belated payments constitutes a deemed extension of time. Reliance was also placed on ***Bharati Knitting Company v. DHL Worldwide Express Courier Division of Airfreight Ltd., II (1996) CPJ 25 (SC),*** and ***Jasraj Inder Singh v. Hemraj Multanchand, (1977) 2 SCC 155.***

11. We have heard the learned Counsel for both parties at length and perused the entire material available on record.

12. At the outset, IA/7871/2025 preferred by the Petitioner Authority, seeking condonation of a delay of 85 days in filing the Revision Petition is allowed for the reasons stated therein, in the interest of substantive justice. The accompanying application seeking condonation of delay of 95 days in filing the written synopsis is likewise allowed, and the synopsis is taken on record alongside the Respondent's synopsis dated 16.03.2026. All other formal applications for exemptions stand allowed, and IA/7869/2025 seeking stay stands disposed of as having become infructuous.

13. The revisional jurisdiction of this Commission under Section 58(1)(b) of the Consumer Protection Act, 2019 is limited to examining whether the Ld. State Commission has exercised a jurisdiction not vested in it by law, has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity. It does not empower this Commission to act as an appellate court to re-examine facts, unless the findings are perverse or demonstrably contrary to the record.

14. An examination of the impugned Order dated 10.12.2024 reveals that the Ld. State Commission fell into patent jurisdictional error. While it accurately observed that the Respondent had deposited Rs. 2,35,151/- covering the substantial cost of the flat, it failed to examine whether the identified property was available in the hands of the development authority or whether third-party rights had intervened. In ***Rajasthan Housing Board & Anr. v. Ratan Devi (supra),*** the Hon'ble Supreme Court held that

where an allottee defaults and the tenement has passed into the hands of third parties, consumer fora cannot issue directions compelling the authority to hand over the tenement after a long lapse of time, and the only equitable relief is a refund of the deposited sum with reasonable interest. In the present case, GDA has established that LIG House No. B-291 was re-allotted to Smt. Maya Singh, a conveyance deed was executed, and physical possession was parted with, which property subsequently passed to Bahoti Jaiswal. Neither subsequent purchaser was impleaded as a party before the fora below. Directing specific delivery of possession of House No. B-291 under summary consumer jurisdiction without impleading the subsequent purchasers in whose favour registered titles stand is legally and practically impermissible. To that extent, the impugned Order of the Ld. State Commission directing delivery of possession and execution of conveyance cannot be sustained and must be set aside.

15. Turning next to the question of refund and the quantum of deduction/forfeiture permissible to the Petitioner Authority: The Ld. District Commission, while denying possession, sanctioned a deduction of 25% from the total deposited amount of Rs.2,35,151/- and directed refund of Rs.1,76,363/- with 9% interest. This deduction of 25% is completely unsustainable in law and runs directly contrary to settled binding jurisprudence.

16. The legal position regarding forfeiture of earnest money in transactions relating to residential apartments/tenements is now well settled. It is a consistent principle of law that, in the absence of evidence of actual loss, forfeiture exceeding 10% of the sale price cannot be regarded as reasonable. This principle has been squarely authoritatively reaffirmed and upheld by the Hon'ble Supreme Court in ***'Godrej Projects Development Limited v. Anil Karlekar & Ors., Civil Appeal No. 3334 of 2023, decided on 03.02.2025, 2025 INSC 143'.*** In the said judgment, the Hon'ble Supreme Court considered a substantially similar situation involving cancellation of an apartment and a contractual stipulation permitting forfeiture of 20% of the Basic Sale

Price (BSP). After examining various precedents dealing with this aspect, the Hon'ble Supreme Court held that the consistent view of this Commission that 10% of the BSP is a reasonable amount liable to be forfeited as earnest money called for no interference, and specifically declined to interfere with the direction limiting forfeiture to 10% of the BSP.

17. Applying the binding mandate of the Hon'ble Supreme Court in ***'Godrej Projects Development Limited v. Anil Karlekar & Ors. (supra)',*** the Petitioner Authority cannot forfeit 25% of the deposited amount. The total estimated basic sale price of the subject LIG House No. B-291 is Rs.2,33,178/-. The maximum permissible forfeiture as earnest money is strictly restricted to 10% of the Basic Sale Price, which works out to: Forfeiture (10% of BSP) = 10% of Rs.2,33,178/-
= Rs.23,317.80 (rounded off to Rs.23,318/-)

18. The total amount deposited by the Respondent/Complainant, as acknowledged by GDA in its statement of account dated 16.07.2012, is Rs.2,35,151/-. Deducting the permissible 10% forfeiture (Rs.23,318/-) from the total deposit of Rs.2,35,151/-, the net principal amount refundable to the Respondent/Complainant is computed as under: Refundable Principal = Rs. (2,35,151/-) – Rs. (23,318/-) = Rs. 2,11,833/- (Rupees Two Lakh Eleven Thousand Eight Hundred and Thirty-Three only) The Respondent is legally and equitably entitled to a refund of
Rs.2,11,833/- along with interest @ 9% per annum from the date of filing of the Complaint.

19. With respect to GDA's contention that a refund cheque bearing No.11952926 for Rs.93,492/- was dispatched to the Respondent on 05.03.2010, the record reveals that GDA failed to place on record any bank debit certificate or statement of account establishing that the cheque was ever encashed by or credited to the account of the Respondent. If GDA establishes through official bank records and a debit certificate that the said amount of Rs.93,492/- was actually received and encashed by the

Respondent, the same shall be adjusted; failing such verification, no deduction on that account shall be permitted.

20. Furthermore, it has been brought to our notice that GDA failed to comply with the conditional stay Order dated 18.07.2025 passed by this Commission, which directed GDA to pay Rs.20,000/- to the Respondent towards travel and incidental expenses within six weeks. The Petitioner Authority must purge this default forthwith by remitting the said amount to the Respondent.

21. Consequently, the Revision Petition is partly allowed. The impugned Order dated 10.12.2024 passed by the learned State Commission in Appeal No. 2650 of 2014 is hereby set aside. The Order dated 12.11.2014 passed by the learned District Forum in Consumer Complaint No. 131 of 2010 is modified in terms of the following directions:

(i) The Petitioner Authority (Gorakhpur Development Authority) is directed to refund to the Respondent/Complainant a sum of
Rs.2,11,833/- (Rupees Two Lakh Eleven Thousand Eight Hundred and Thirty-Three only) [being the total deposited amount of
Rs.2,35,151/- less 10% of the sale price (Rs.23,318/-) forfeited as earnest money in terms of the law laid down by the Hon'ble Supreme Court in ***'Godrej Projects Development Limited v. Anil Karlekar & Ors. (supra)]',*** together with simple interest @ 9% per annum calculated from the date of filing of the Complaint, i.e., 13.04.2010, until the date of actual payment.

(ii) Any amount that GDA conclusively establishes, through official bank statements and a certificate of encashment from the banker, to have been actually received and encashed by the Respondent under refund Cheque No. 11952926, shall be adjusted against the amount payable under clause (i) above. In the absence of proof of actual debit/encashment, no adjustment shall be made.

(iii) In compliance with the interim Order dated 18.07.2025, GDA shall pay to the Respondent an amount of Rs.20,000/- (Rupees Twenty Thousand only) towards travel and incidental expenses within a period of four (4) weeks from today, which shall be independent of and shall not be adjusted against the awarded refund or interest.

(iv) The entire outstanding payment under clauses (i) and (ii) shall be disbursed to the Respondent within a period of eight (8) weeks from the date of this Order, failing which the unpaid sum shall attract enhanced simple interest @ 12% per annum from the expiry of the eight-week period until final realization.

(v) Any residual balance deposited by the Respondent before the learned District Forum pursuant to interim directions (admitted balance of Rs.6,984.42) shall be refunded back to the Respondent with accrued interest, if any.

22. There shall be no order as to costs.

23. All pending applications, if any, shall stand disposed of accordingly.

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AVM J. RAJENDRA AVSM VSM RETD.
PRESIDING MEMBER

.....J
SAROJ YADAV
MEMBER

SONIA BAJAJ/Court-4/S