

# **M/S. GULSHAN HOMZ & INFRASTRUCTURE PVT. LTD. V. SAURAV GUPTA & ANR.**

1. M/S. GULSHAN HOMZ & INFRASTRUCTURE PVT. LTD.  
121, HARGOBING ENCLAVE, DELHI-110092

.....Appellant(s)

Versus

1. SAURAV GUPTA & ANR.

E-21, GULSHAN HOMZ-VIVANTE, PLOT NO. 7A, SECTOR-  
137, NOIDA,

UTTAR PRADESH

2. MRS. SHILPA GUPTA, W/O. MR. SAURAV GUPTA, E-21,  
GULSHAN HOMZ-VIVANTE,  
PLOT NO. 7A, SECTOR-137,  
NOIDA-U.P.-201305

.....Respondent(s)

Case No: FIRST APPEAL NO. 361 OF 2020

Date of Judgement: 19 Jan 2023

Judges:

HON'BLE MR. DINESH SINGH, PRESIDING MEMBER

For the Appellant : MR. TANAY AYDE

For the Respondent : Mr. Sanchit Goyal, Advocate

**Facts:**

***Appeal filed against order dated 22.01.2020 of State Commission Delhi in Consumer Case no. 822/2017. The State Commission had closed the right of the opposite party***

*(appellant) to file evidence by way of affidavit.*

**Procedural Aspect:**

*Appeal delayed by 11 days but delay condoned in interest of justice.*

**Observations & Decision:**

*In interest of justice and principles of natural justice, opportunity granted to appellant to file evidence subject to cost. Order of State Commission closing right to file evidence set aside subject to cost of Rs 50,000 on appellant. Appellant directed to file evidence in 30 days else right will cease. State Commission to proceed with hearing once terms are complied.*

*As visible from the relatively short order document, there is no substantive discussion of the facts and legal issues in the consumer case itself. No elaborate reasoning or arguments advanced by parties are recorded. No statutory provisions or case laws have been cited or relied upon.*

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**Full Text of Judgment:**

1. This appeal has been filed in challenge to the Order dated 22.01.2020 of the State Commission in complaint no. 822 of 2017.
2. Heard the learned counsel for the appellant (i.e. the opposite party no. 1 before the State Commission) and for the respondents (i.e. the complainants before the State Commission). Also perused the record including inter alia the State Commission's impugned Order dated 22.01.2020 and the memorandum of appeal.
3. The appeal has been filed with self-admitted delay of 11 days.

However, in the interest of justice, and considering the reasons mentioned in the application for condonation of delay, as also in order to decide the matter on merit rather than to dismiss it on the threshold of limitation, the delay in filing the appeal is condoned.

4. The appeal impugns an interlocutory order of the State Commission vide which the right of the opposite party no. 1 to file its evidence by way of affidavit was closed. The said Order is reproduced below for reference:

22.01.2020

Present: Mr. Rahul Mangla, counsel for Complainant.

None for OP-1

OP-2 is ex-parte.

C-822/2017

No one has appeared on behalf of OP-1 despite awaiting.

OP-1 has not filed evidence by way of affidavit by giving sufficient opportunity on the last date of hearing. Right to file evidence by way of affidavit of OP-1 stands closed.

Parties to file written arguments within 08 weeks after exchanging copies with each other.

Re-list on 27.03.2020.

5. Though not expressing any opinion about the merits of the case, but considering the nature of the dispute and the overall facts and circumstances in their totality, and also keeping in perspective the first principles of natural justice, it is felt to be just and appropriate that one opportunity may be provided to the opposite party no.1 to file its evidence subject to suitable terms / cost.

6. As such the Order dated 22.01.2020 of the State Commission to the extent it relates to closing the right of the opposite party no.1 to file its evidence by way of affidavit is set aside subject to cost of Rs. 50,000/- to be paid by the opposite party no.1 to the complainants within 30 days from today without fail. It is concomitantly directed that the

opposite party no.1 shall file its evidence by way of affidavit before the State Commission within the same period of 30 days from today failing which its right to file evidence shall obliterate.

The State Commission is requested to proceed further with the adjudication of the case in the normal wont as per the law.

If the cost imposed is not paid within the stipulated period or the evidence is not filed within the stipulated period the State Commission's Order of 22.01.2020 shall stand as it stood and the State Commission shall so proceed further.

The opposite party no. 1 is sternly advised to conduct its defence properly before the State Commission.

7. The parties are directed to appear before the State Commission on 10.03.2023.

8. The Registry is requested to send a copy each of this Order to the parties in the appeal and to their learned counsel immediately. It is also requested to forthwith communicate this Order to the State Commission by the fastest mode available. The stenographer is requested to upload this Order on the website of this Commission immediately.

9. 'Dasti', in addition, to facilitate timely compliance.