

**BEFORE THE NATIONAL CONSUMER DISPUTES
REDRESSAL COMMISSION, NEW DELHI**

**I.A. NO. OF 2023
IN
CONSUMER COMPLAINT NO.176 OF 2022**

IN THE MATTER OF:

VISTA HOMES OWNERS ASSOCIATION

..... COMPLAINANTS

VERSUS

M/S VISTA HOMES & ANR

..... OPPOSITE PARTIES

**APPLICATION ON BEHALF OF THE OPPOSITE PARTY
NO. 1 & 2 SEEKING RECALLING OF ORDER DATED
31.07.2023 PASSED EX-PARTE**

MOST RESPECTFULLY SHOWETH

1. That it is submitted that the above-mentioned Consumer Complaint filed by the Complainant is pending before this Hon'ble Commission for adjudication. It is also submitted that the Complainant filed the present Consumer Complaint under the Consumer Protection Act, 1986 (Old Act) and served the copy of the same upon the Opposite Party. It is also submitted that the cause of action has been raised by the Complainant after the



commencement of the Consumer Protection Act, 2019 (New Act). Therefore, as per the copy served by the Complainant upon the Opposite Party the instant Consumer Complaint is not maintainable.

2. That Mr. Varun Mohan, Advocate for the Opposite Party 1, had taken ill from viral fever and he had taken appointment for consultation on 30.07.2023 and was given an appointment for 31.07.2023. A true copy of the prescription mentioning the same is annexed herewith as **Annexure A-1**

3. That Mr. Jaydip Pati, Advocate for the Opposite Party was present in the Court to appear before this Hon'ble Commission in the present matter to assist this Hon'ble Commission. He was present in the Court even after the Special Bench was over. It is pertinent to mention here that unfortunately, he received a call from one of his colleague who met an accident and due to that he had to go for sometimes to attend him in that unavoidable situation. The



instant Consumer Complaint was listed before Court No. 1 of this Hon'ble Commission as Item No. 103 on 31.07.2023. It is also submitted that after attending his colleague, as soon as he reached this Hon'ble Commission, the ex-parte order was passed by this Hon'ble Commission. It is submitted that when he enquired about the order passed by this Hon'ble Commission from the Court Master, he was informed that ex-parte order closing the right of the Opposite Party to file the Written Statement/Reply had already been passed. It is submitted that the non-appearance in the matter was not intentional. The act of the Advocate is bona fide and due to certain unavoidable circumstances. The above mentioned reason for non-appearance may be submitted on affidavit by the Advocate in case this Hon'ble Commission feels it proper.



PRAYER

It is therefore humbly prayed that this Hon'ble Commission may graciously be pleased to pass:

- (a) To recall the ex-parte order dated 31.07.2023 passed by this Hon'ble Commission closing the right of the Opposite Party to file the Written Statement / Reply.
- (b) To pass such other appropriate order/orders as this Hon'ble Commission may think fit and proper to do conscionable justice to the Opposite Party.

AND FOR THIS ACT OF KINDNESS THE OPPOSITE PARTY AS IN DUTY BOUNDS SHALL EVER PRAY.

Through

**VARUN MOHAN
ADVOCATES FOR THE O.P. 1 & 2**

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13.12.2023



ATTESTED
[Signature]
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