

Section 38 in Consumer Protection Act, 2019

38. Procedure on admission of complaint.

(1)The District Commission shall, on admission of a complaint, or in respect of cases referred for mediation on failure of settlement by mediation, proceed with such complaint.(2)Where the complaint relates to any goods, the District Commission shall,-(a)refer a copy of the admitted complaint, within twenty-one days from the date of its admission to the opposite party mentioned in the complaint directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by it;(b)if the opposite party on receipt of a complaint referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Commission, proceed to settle the consumer dispute in the manner specified in clauses (c) to (g);(c)if the complaint alleges a defect in the goods which cannot be determined without proper analysis or test of the goods, obtain a sample of the goods from the complainant, seal it and authenticate it in the manner as may be prescribed and refer the sample so sealed to the appropriate laboratory along with a direction that such laboratory to make an analysis or test, whichever may be necessary, with a view to finding out whether such goods suffer from any defect alleged in the complaint or from any other defect and to report its findings thereon to the District Commission within a period of forty-five days of the receipt of the reference or within such extended period as may be granted by it;(d)before any sample of the goods is referred to any appropriate laboratory under clause (c), require the complainant to deposit to the credit of the Commission such fees as may be specified, for payment to the appropriate laboratory for carrying out the necessary analysis or test in relation to the goods in question;(e)remit the amount deposited to its credit under clause (d) to the appropriate laboratory to enable it to carry out the analysis or test mentioned in clause (c) and on receipt of the report from the appropriate laboratory, it shall forward a copy of the report along with such remarks as it may feel appropriate to the opposite party;(f)if any of the parties disputes the correctness of the findings of the appropriate laboratory, or disputes the correctness of the methods of analysis or test adopted by the appropriate laboratory, require the opposite party or the complainant to submit in writing his objections with regard to the report made by the appropriate laboratory;(g)give a reasonable opportunity to the complainant as well as the opposite party of being heard as to the correctness or otherwise of the report made by the appropriate laboratory and also as to the objection made in relation thereto under clause (f) and issue an appropriate order under section 39.(3)The District Commission shall, if the complaint admitted by it under sub-section (2) of section 36 relates to goods in respect of which the procedure specified in sub-section (2) cannot be followed, or if the complaint relates to any services,-(a)refer a copy of such complaint to the opposite party directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Commission;(b)if the opposite party, on receipt of a copy of the complaint, referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Commission, it shall proceed to settle the consumer dispute-(i)on the basis of evidence brought to its notice by the complainant and the opposite party, if the opposite party denies or disputes the allegations contained in the complaint, or(ii)ex parte on the basis of evidence brought to its notice by the complainant, where the

opposite party omits or fails to take any action to represent his case within the time given by the Commission;(c)decide the complaint on merits if the complainant fails to appear on the date of hearing.(4)For the purposes of sub-sections (2) and (3), the District Commission may, by order, require an electronic service provider to provide such information, documents or records, as may be specified in that order.(5)No proceedings complying with the procedure laid down in sub-sections (1) and (2) shall be called in question in any court on the ground that the principles of natural justice have not been complied with.(6)Every complaint shall be heard by the District Commission on the basis of affidavit and documentary evidence placed on record:Provided that where an application is made for hearing or for examination of parties in person or through video conferencing, the District Commission may, on sufficient cause being shown, and after recording its reasons in writing, allow the same.(7)Every complaint shall be disposed of as expeditiously as possible and endeavour shall be made to decide the complaint within a period of three months from the date of receipt of notice by opposite party where the complaint does not require analysis or testing of commodities and within five months if it requires analysis or testing of commodities:Provided that no adjournment shall ordinarily be granted by the District Commission unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by the Commission:Provided further that the District Commission shall make such orders as to the costs occasioned by the adjournment as may be specified by regulations:Provided also that in the event of a complaint being disposed of after the period so specified, the District Commission shall record in writing, the reasons for the same at the time of disposing of the said complaint.(8)Where during the pendency of any proceeding before the District Commission, if it appears necessary, it may pass such interim order as is just and proper in the facts and circumstances of the case.(9)For the purposes of this section, the District Commission shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:-(a)the summoning and enforcing the attendance of any defendant or witness and examining the witness on oath;(b)requiring the discovery and production of any document or other material object as evidence;(c)receiving of evidence on affidavits;(d)the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;(e)issuing of commissions for the examination of any witness, or document; and(f)any other matter which may be prescribed by the Central Government.(10)Every proceeding before the District Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code, and the District Commission shall be deemed to be a criminal court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).(11)Where the complainant is a consumer referred to in sub-clause (v) of clause (5) of section 2, the provisions of Order I Rule 8 of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to a complaint or the order of the District Commission thereon.(12)In the event of death of a complainant who is a consumer or of the opposite party against whom the complaint has been filed, the provisions of Order XXII of the First Schedule to the Code of Civil Procedure, 1908(5 of 1908) shall apply subject to the modification that every reference therein to the plaintiff and the defendant shall be construed as reference to a complainant or the opposite party, as the case may be.