

**Consumer Disputes Redressal Forum, Kottayam
Kottayam**

**Complaint Case No. CC/57/2022
(Date of Filing : 17 Mar 2022)**

1. Adv. Manu Nair G



.....Complainant(s)

Versus

1. Ford India Pvt. Ltd.

5th floor, Plot No. 142, Chimes 142, Sector 44 road, Sector 44,
Gurgaon 122003 Hariyana

Hariyana

2. Kairali Ford

MFG Buildings, M C road, SH Mount P O Nagambadam
Kottayam-686006

Kottayam

Kerala

.....Opp.Party(s)

BEFORE:

HON'BLE MR. V.S. Manulal PRESIDENT

HON'BLE MRS. Bindhu R MEMBER

HON'BLE MR. K.M.Anto MEMBER

PRESENT:

Dated : 24 Aug 2023

Final Order / Judgement

IN THE CONSUMER DISPUTES REDRESSAL COMMISSION, KOTTAYAM

Dated this the 24th day of August, 2023

Present: Sri.Manulal.V.S, President

Smt.Bindhu.R, Member

Sri.K.M.Anto, Member

CC No.57/2022 (Filed on 17/03/2022).

Complainant

: Adv.Manu Nair.G,

S/o Adv.N. Gopalakrishnan,

Vrindavan House,
Thiruvarppu, Kottayam - 686
020.
(By Advs: Thomas.P.Makil
& George. K.George))

Vs.

Opposite parties : 1. Ford India (P) Limited,
Registered Office, 5th Floor,
Plot No.142, Chimes 142,
Sector 44 Road, Sector 44,
Gurgaon – 122 003, Haryana
(By Advs:Jidesh Kumar
M.D, Smita Paliwal,
& M.C. Suresh)
Gaurav Singh Gaur

2. Kairali Ford,
Registered Office,
MGF Buildings,
MC Road, SH Mount P.O,
Nagambadam, Kottayam – 686 006.
(By Advs: George Cherian
Karippaparambil
K.Anilkumar Ambady)

ORDER

Sri.Manulal.V.S, President

Crux of the complaint is as follows:

The complainant on being induced by the advertisement published by the first opposite party on web pages and such other digital platforms, publicizing their cars and the festival offer given by the first opposite party, was enticed and decided to purchase a EcoSport Titanium car from the first opposite party through the second opposite party who is the authorized dealer of the first opposite party. As against the enquiry by the complainant about the availability of stock of the said car, the second opposite party informed the complainant that all units of the cars which the second opposite party had in stock was sold out and that the delivery of the subject car will only happen when fresh stock from the first opposite party arrives.

After having test driven the car on 17/08/2021, the complainant had booked Ford EcoSport Titanium which is manufactured by the first opposite party and is sold through the second opposite party. For the purpose of booking the car the complainant had paid Rs.2,000/- as per the directions of the second opposite party. At that time the complainant had signed all necessary documents, as stipulated by the second opposite party, in order to establish a proper consumer-supplier relationship between the complainant and first opposite party, for the purchase of the said car through the second opposite party. The complainant had signed various documents on a welcome booklet provided by the second opposite party on behalf the first opposite party, which contained order booking form, vehicle pricing form, extra accessories and services, delivery schedule and so on which cross signed by the second opposite party accepting the promise of delivery. The second opposite party had assured the complainant that the car would be delivered to the complainant on or before 30/12/2021.

While so on 9/09/2021 the first opposite party had made an official announcement through its Managing Director that the first opposite party had decided to stop manufacturing cars in India. It was also made clear by the first opposite party during the press release that sales of the on-going models such as EcoSport, Endeavour, Figo and so on would cease once existing dealer inventories are sold.

Upon enquiry by the complainant, the second opposite party informed the complainant that there are no units of the said car left in their stock and that it has become impossible for them to deliver the car in such situation. It is averred in the complaint that the first opposite party had clearly breached the consumer-supplier agreement entered upon by the complainant with the second opposite party on behalf of the first opposite party. It is alleged in the complaint that the booking of the said car was taken by the opposite parties from the complainant only three weeks prior to the shutdown of the first opposite party's manufacturing plant. The act of the first and second opposite parties amounts to deficiency in service and unfair trade practice and violation of consumer awareness. So this complaint is filed by the complainant praying for an order to direct the second opposite parties to refund Rs 2,000/- together with interest @ 12% per annum from the date of payment till realization and to direct the first opposite party to pay Rs.4,00,000/- as compensation for the mental agony and inconvenience caused to the complainant and to pay Rs. 10,000/- as cost of this litigation.

Upon notice opposite parties appeared before the Commission and filed separate versions.

The version of the first opposite party is as follows:

The first opposite party is a subsidiary of Ford Motor Company of United States, which manufactures ford cars and was one of the largest car makers in India. The ford cars are well

known for their exceptional quality and craftsmanship around the world.

It is submitted in the version that the first opposite party is in no way related to the instant complaint and has been unnecessarily dragged as party to the complaint with malafide intention. The second opposite party is the authorized dealer of the first opposite party and the authorized dealer is appointed on a principal to principal basis whereby dealers are solely responsible for their on actions related sales, service and other warranty related claims.

It is further submitted in the version that complainant claims that he booked a Ford EcoSport Titanium from the second opposite party on 17/08/2021. However, on 9/09/2021 first opposite party had made an official announcement that they have decided to stop manufacturing vehicles in India. The first opposite party has never dealt directly with the complainant. The complainant never had any concern pertaining to manufacturing defect in the vehicle.

The first opposite party has duly followed all advertising guidelines and always advertised true facts pertaining to all vehicles manufactured by the first opposite party. The first opposite party can only be liable if there is any manufacturing defect in the vehicle manufactured by the first opposite party. There is no privity of contract between the complainant and the first opposite party. The first opposite party is not liable for the alleged transaction between the complainant and the second opposite party. It is clearly mentioned in Section 84 of Consumer Protection Act 2019 that the manufacturer can only be held liable in certain cases. The first opposite party is not liable for the assurance or promise made by the second opposite party. The first opposite party is an independent body that used to manufacture cars and first opposite party has not given any authority to the second opposite party to act its behalf.

The first opposite party has not completely exited the Indian market. They are still providing after-market services and support to their dealers and customers. The complainant has not paid any consideration directly to the first opposite party. There is no deficiency in service or unfair trade practice on the part of the first opposite party.

Second opposite party filed version contending as follows:

The case of the complainant is that the complainant had booked EcoSport Diesel 1.5 Titanium vehicle on 17/08/2021 by paying an advance amount of Rs.2,000/-. Complainant was informed that for booking the EcoSport minimum required booking amount is Rs.30,000/- which the complainant agreed to pay immediately. Thereafter complainant had failed to make the balance booking amount of Rs.28,000/-. In the order booking form itself the minimum booking amount is stipulated Rs.30,000/-. Further the tentative delivery of the vehicle was fixed as during the week started on 13/12/2021. The price of the car was never fixed on 17/08/2021. The specific understanding on 17/08/2021 is that final on road price will be determined on the date of delivery and might increase or decrease due to changes by statutory authorities or by Ford. Allegations in the paragraph numbers 10, 11, 12 and 13 of the complaint are falls. The second opposite party came to know about the cessation of business of manufacturing of cars by first opposite party only on 9/09/2021 when the first opposite party's Managing Director made a public announcement to that effect. The announcement of the first opposite party was a severe blow to the second opposite party as the second opposite had made huge investments for setting up numerous number of service centres and dealerships across Kerala. The loss suffered by the second opposite party is to the tune of more than 10 crores.

The second opposite party was unaware of the decision to close down the business taken by the first opposite party and it came to the knowledge of the second opposite party only on 9/09/2021. Immediately after that the second opposite party informed the complainant to provide his bank account details for reimbursing Rs.2,000/-. In spite of repeated reminders, through whatsapp message and voice messages on 21/09/2021, the complainant has failed to provide the account details. There is no deficiency in service on the part of the second opposite party.

The complainant filed proof affidavit in lieu of chief examination and marked Exhibits A1 to A5 from the side of the complainant. Satish Verma Datla who is the Controller of the first opposite party filed proof affidavit in lieu of chief examination and marked Exhibits B1 to B3 from the side of the first opposite party. Koshi Varghese who is the Manager of the second opposite party filed the proof affidavit. No documentary evidence on the side of the second opposite Party.

On evaluation of complaint, version and evidence on record we would like to consider the following points:

1. Whether there is any deficiency in service or unfair trade practice on the part of the opposite parties ?
2. If so, what are the reliefs and cost?

For the sake of convenience we would like to consider point number one and two together.

POINTS 1 & 2 :

There is no dispute on the fact that the complainant had booked EcoSport Diesel 1.5 Titanium vehicle on 17/08/2021 by paying an advance amount of Rs.2,000/- to the second opposite party. Exhibit A4 is the receipt issued by the second opposite party on 17/08/2021 to the complainant for an amount of Rs.2,000/-. The specific case of the complainant is that though the second opposite party had assured that the car would be delivered to the complainant on or before 30-12-2021, on 9/09/2021 the first opposite party had made an official announcement that the first opposite party had decided to stop manufacturing cars in India and sales of the on-going models such as EcoSport, Endeavour, Figo and so on would cease once existing dealer inventories are sold and this amounts to deficiency in service and unfair trade practice on the part of the first opposite party.

It is also admitted fact that the said booking was confirmed vide Exhibit A5 wherein the complainant and the representative of the second opposite party signed undertaking to abide by all the terms and conditions mentioned therein. It is also admitted fact that at the time of booking confirmation, the second opposite party assured the complainant that the aforesaid vehicle would be delivered on 30-12-2021. It is also admitted fact that at the time of booking, the price of the vehicle as per Exhibit A5 was Rs.9,94,900/-.

First opposite party submitted that the relationship shared between answering opposite Party and the authorized Dealer/OP.2 is on principal-to-principal basis. The liability of selling of the cars and ancillary services such as after sales services are exclusively provided by authorized dealers and not by answering opposite Party. Each opposite party is liable for its own respective actions and none assumes liability for the actions of the other. It is only in the case of any manufacturing defect that first opposite party is required to meet its obligation as per the terms of the warranty.

Any grievance with respect to selling of cars, deficiency in service and unfair trade practice can only be made against Dealers.

Regarding privity of contract, Learned Counsel for the first opposite party submitted that there was no privity of contract between the complainant and the first opposite party and therefore the opposite party was not liable to pay any damages to the complainant. Judgment relied by Learned Counsel for the Appellant in Maruti Udyog Limited vs. Nagender Prasad Sinha (supra) is not applicable in the facts of the case. In that case, National Commission held that principal is not liable for the act done by its agent. In the present case, there is no issue regarding the act of the agent and liability of the principal. In the case on hand, the issue relates to the cessation of the manufacturing and sales operation by the manufacturer who is the first opposite party after receiving the advance booking amount from the complainant through their dealers.

It is not the case that delivery was made late. Had it been the case of the respondents, the matter would have been different but in the instant case, they cancelled the order of the complainant on their own without giving it a single thought that how the said cancellation would affect the complainant both mentally and physically. The feelings of the complainant would have definitely got hurt, when he came to know about the cancellation of the order by the first opposite party on their own and at that time. Had there been any decision to cease the production and sale of the vehicle in India, the first opposite party should not have allowed their dealers to receive the booking from the general public who were not aware of the decision of the first opposite party, which they later-on cancelled. Had the first opposite party intended to cease their operation in the market, they would inform the same to their dealer in well advance and to instruct them to not receive any booking for new vehicles from the costumers. They did not make an enquiry from the dealer why the dealer had received booking for the vehicle. They did not take any action against the dealer, his agency was never cancelled. It is, thus, clear that the dealer and Ford India Motors Ltd were working in cahoots with each other. The Ford India Motors Ltd. is vicariously liable for the omissions and commissions of their dealer. They cannot permit their dealers to indulge in such activities who work under their nose.

The action of both the parties is below the belt. They made an attempt to lead the gullible customer up the garden path. The consumer swallowed the bait advertisement published by the first opposite party and booked the car.

Clause 5(b) and (d) of the Central Consumer Protection Authority notification dated 9/06/2022 is reproduced hereunder:

5. Conditions for bait advertisements. — A bait advertisement shall fulfil the following conditions, namely:-

(a) such advertisement shall not seek to entice consumers to purchase goods, products or services without a reasonable prospect of selling such advertised goods, products or services at the price offered;

(b) the advertiser shall ensure that there is adequate supply of goods, products or services to meet foreseeable demand generated by such advertisement;

(c) such advertisement shall state the reasonable grounds which the advertiser has for believing that he might not be able to supply the advertised goods, products or services within a reasonable

period and in reasonable quantities, and in particular,— (i) if the estimated demand exceeds the supply, such advertisement shall make clear that the stock of the goods or services is limited; (ii) if the purpose of the advertisement is to assess potential demand, it shall be clearly stated such advertisement; and (iii) the advertisement shall not mislead consumers by omitting restrictions, including geographic restrictions and age-limit on the availability of the goods, products or services;

(d) such advertisement does not mislead consumers about the market conditions with respect to the goods, products or services or the lack of their availability in order to induce consumers to purchase such goods, products or services a conditions less favourable than normal market conditions.

Thus, grave deficiency in rendering service is attributable on the part of the first opposite party on this account.

Not only above, when the first opposite party publishes advertisements to sell their vehicles, they were expected to deliver the same on time and in not doing so and simultaneously, cancelling the order on their own amounted to deficiency in rendering service and unfair trade practice on their part. In case, they were not able to deliver the vehicle timely as per their assurance offered in the advertisements, then, they should not have allowed their dealers through whom the first opposite party sell the vehicles and provides after sale service to receive any booking for a new vehicle from the public, which further contributed to unfair trade practice on their part. In given circumstances, we are of the concerted view that such like alluring advertisement or campaigns should not have been published or launched by first opposite party, in case, they cannot fulfil the same.

As per the own assertion of first opposite party though the relation of first and second opposite parties is on principal to principal basis but in case of manufacturing defect in the car, the liability of dealer and manufacturer is coextensive qua the consumer/complainant herein. The second opposite party has in its pleadings submitted that whatever action is taken by first opposite part, it will abide by that, therefore, we hold first opposite party is liable for deficiency in service and unfair trade practice followed in dealing with the case of complainant. Since the interest of the Dealers is not independent of the Manufacturer of the vehicle, we find that the liability cannot be fastened against the Dealers, whose interest is common with the manufacturer of the vehicle, in fact derives from the manufacturer of the vehicles. If our information is correct, even first opposite party has stopped production of new cars in India and only maintenance and operation of existing Ford vehicle is being undertaken by first opposite party through its dealer network.

In view of foregoing discussion, we are of the considered opinion that deficiency in rendering service and for indulgence into unfair trade practice on the part of the respondents and also for suffering immense physical harassment and mental agony, the first opposite party is liable to compensate the appellants. In our concerted view, consolidated compensation on aforesaid counts and also for litigation expenses, if granted in the sum of Rs.1,00,000/- that would meet the ends of justice.

In the light of above discussion we allow the complaint and pass the following order.

a. We hereby direct the second opposite party to refund Rs. 2,000/- (Rupees Two Thousand only) together with interest @ 12% per annum from the date of payment till realization.

(b) We hereby direct the first opposite party to pay Rs.1,00,000/-(Rupees One Lakh only) as compensation for the mental agony and inconvenience caused to the complainant.

The order shall be complied within 30 days from the date of receipt of copy of this order. If not complied as directed, the compensation amount will carry 9% interest from the date of order till realisation.

Pronounced in the Open Commission on this the **24th** day of August, **2023**

Sri.Manulal.V.S, President Sd/-

Smt.Bindhu.R, Member Sd/-

Sri.K.M.Anto, Member Sd/-

APPENDIX :

Exhibits from the side of the Complainant :

- A1 - True copy of print out of the e-mil dated 18/08/2021
sent by the 2nd opposite party
- A2 - True copy of print out of Whatsapp communication dated
16/08/2021 & 17/08/2021
- A3 - Print out of the internet sites and web pages showing
the on-road testing of the facelift model of
Ford EcoSport Titanium
- A4 - True copy of Receipt No.1345 dated 17/08/2021
for Rs.2,000/- as advance payment issued by
the 2nd opposite party
- A5 - True copy of 'Welcome Booklet'

Exhibits from the side of Opposite parties :

- B1 - Copy of Board Resolution dated 18/03/2021
- B2 - Copy of relevant extract of Dealership Agreement

between the 1st and 2nd opposite parties

B3 - Copy of relevant extract of Dealership Agreement

between the 1st and 2nd opposite parties

By Order,

Sd/-

Assistant Registrar

**[HON'BLE MR. V.S. Manulal]
PRESIDENT**

**[HON'BLE MRS. Bindhu R]
MEMBER**

**[HON'BLE MR. K.M.Anto]
MEMBER**